97th Congress
2d Session

COMMITTEE PRINT

A LEGISLATIVE HISTORY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (SUPERFUND), PUBLIC LAW 96-510

TOGETHER WITH

A SECTION-BY-SECTION INDEX

PREPARED BY THE

ENVIRONMENT AND NATURAL RESOURCES POLICY DIVISION

OF THE

CONGRESSIONAL RESEARCH SERVICE

OF THE

LIBRARY OF CONGRESS

FOR THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE

VOLUME 1

SERIAL NO. 97-14

Printed for the use of the Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE
11-888 O WASHINGTON : 1983

S322-S

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LETTER OF SUBMITTAL

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., October 29, 1982.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request, we have prepared a legislative history of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly known as the Superfund Act, Public Law 96–510.

This document contains the major bills, reports, and debates which comprise the action of the 96th Congress concerning the Act. Appendices contain additional documents and statements directly pertinent to the history of the law, as well as a bibliography of congressional documents. A guide to the texts of the many bills and amendments, and a section-by-section index are included for the convenience of the reader.

The history should be of considerable aid to legislators, public officials, industries, and the general public who are affected by this Act and wish to understand the intent of Congress. Its publication will make all of the necessary materials, some of which are out of print, available in one comprehensive document.

The author of this report was Mark E. Anthony Reisch, Analyst in the Environment and Natural Resources Policy Division.

We hope this document will serve your Committee's needs for a history of congressional action on this law.

Sincerely,

GILBERT GUDE,
Director.

BEST COPY AVAILABLE

PREFACE

This legislative history compiles the documents and debates leading to the passage of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Commonly known as the "Superfund" law, it was signed by President Jimmy Carter on December 11, 1980 (Public Law 96-510).

The original Administration proposal (introduced by request as S. 1341, H.R. 4566 and H.R. 4571) reflected a decision to deal with three problems in one piece of legislation. Two of the issues, oil spills and spills of hazardous substances, had been the subject of previous congressional attention related to the Clean Water Act. The third issue, leakage from abandoned waste disposal sites, was prompted by the Love Canal, New York, incident and other occurrences around the country which came to public attention during this period. The Environmental Protection Agency offered two principal reasons for combining them: administrative ease, and the fact that oil and hazardous substances were both involved in some situations.

The proffered solution ran counter to the recent history of oil spill liability and compensation legislation. While law was in place to provide for the cleanup of oil spills, efforts in previous Congresses to recompense the victims of spills had foundered. There were two different legislative tacks in the 95th Congress (1977-1978): S. 2900 would have enhanced the existing oil and hazardous substance provisions of the Clean Water Act, and S. 2083/H.R. 6803 would have established a new area of law for oil pollution liability and compensation. The Senate's attempt to include hazardous substance spills in the bill was resisted by the House, and the second session ended before a compromise could be reached.

In the 96th Congress (1979-1980), however, current events focused attention on the cleanup of dumps containing toxic wastes, and this issue was the driving force that ultimately brought forth the law. But the road was neither easy nor direct, and, as in previous years, oil spill liability and compensation failed of passage.

Action in the House of Representatives followed two tracks, with hazardous waste cleanup being considered in the Committee on Interstate and Foreign Commerce, and oil spill legislation being dealt with in the Committees on Merchant Marine and Fisheries, and on Public Works and Transportation. The Subcommittee on Transportation and Commerce of the Commerce Committee held 4 days of hearings between June 19 and October 11, 1979. This led to the introduction of H.R. 7020 by subcommittee chairman James Florio; an amendment in the nature of a substitute was reported on May 16, 1980, from Energy and Commerce. The bill then went to the Ways and Means Committee for consideration of its funding provisions; in essence, it was agreed that what H.R. 7020 called "fees" on industry were actually taxes and thus subject to review by Ways

and Means. That committee doubled the size of the fund from the $600 million proposed by the Commerce Committee to $1.2 billion; and changed the share of the fund to be contributed by industry and Government from 50-50 to 75 percent from industry and 25 percent from Government. H.R. 7020 was reported by Ways and Means on June 20, debated on September 19 and 23, and passed by 351-23.

H.R. 7020 was only half of the superfund envisioned by the Administration, dealing with hazardous waste dumps. Oil spills were under the jurisdiciton of the Merchant Marine and Fisheries Committee and the Public Works and Transportation Committee. Merchant Marine and Fisheries reported H.R. 85 on May 15, 1979, setting up a $200 million fund for oil spills only. When Public Works and Transportation reported the bill a year and a day later, however, a $100 million fund was added for cleaning up chemical spills. Both versions of H.R. 85 then went to the Ways and Means Committee, which combined them and increased the size of the two funds to $369 million each. The bill was considered on September 18 and 19, 1980, and passed by a vote of 288-11. The oil and chemical spill bill then went over to the Senate along with H.R. 7020; ultimately H.R. 85 died there.

The leading Senate bill, S. 1480, was introduced by the leadership of the Senate Committee and the two subcommittees of jurisdiction (committee chairman Jennings Randolph; Senator Robert Stafford, who was the ranking minority member of the full committee, as well as of the Subcommittee on Environmental Pollution, which was chaired by Senator Edmund Muskie; and Senators John Culver and John Chafee, who were the chairman and ranking minority member of the Subcommittee on Resource Protection).

Unlike earlier Senate versions, S. 1480 did not include spills of oil. But the toxic substance coverage of the previous Congress was broadened to include any release to the environment of any hazardous substance. In addition to establishing a no-fault victim compensation scheme, S. 1480 proposed a Federal cause of action for those injured by poisonous chemicals. Those releasing hazardous substances were to be held to a standard of strict joint and several liability in an attempt to induce a higher standard of care, and thus, to help prevent future chemical accidents. Thus, the breadth of coverage and scope of liability came to be major differences between the House and the Senate approaches. While the two House bills focused on two classes of releases—oil spills and abandoned hazardous waste sites—the Senate version dealt with the generic problem of toxic chemical releases.

S. 1480 was considered jointly by the Senate Environment and Public Works Subcommittees on Environmental Pollution and on Resource Protection, which held 11 days of hearings between March 28 and September 7, 1979. The bill was amended during 12 days of markup by the subcommittees, and again during 5 days of markup by the full committee. Favorably reported to the Senate on July 11, 1980, it was rereferred to the Committee on Finance on October 1 for consideration of the provisions raising money for the fund. On November 18, Finance reported the bill back to the Senate without amendment, recommendation, or written report.

In the meantime, of course, the national elections had taken place on November 4 and subsequent events during the lame-duck session were colored by the fact that the Republicans would become the majority party in the Senate in 1981. It was not at all clear, however, what impact that would have on the Superfund legislation.

As reported, S. 1480 called for creation of a $4.1 billion fund. On November 14, the likely incoming chairman of the Environment Committee, Senator Stafford, announced that he and committee chairman Randolph were introducing a $2.7 billion compromise (amendment No. 2622). But when it was called to the Senate floor on November 20, objection to its consideration was voiced. A motion to table the bill (which would have killed it) lost by 29–50. It was then withdrawn and new concessions were made by its sponsors: the fund was cut to $1.6 billion and the provision compensating victims of environmental disasters for their medical expenses was deleted (amendment No. 2631). On November 24, this version passed by a 78–9 vote, its provisions were substituted for the language of H.R. 7020, and the resulting bill was returned to the House.

The delicate nature of the compromise which permitted Senate passage is elucidated in the letter from Senators Randolph and Stafford to Representative Florio (volume 1, page 774). This procedure explains the absence of a conference report. The House agreed to the Senate amendments on December 3 by a 274–94 vote, and the President signed it into law on December 11, 1980.

In preparing this legislative history, the daily edition of the Congressional Record was used, and the page numbers cited are from that source. Following the Record's practice, the bullet symbol, ●, identifies statements or insertions which were not actually spoken by the Members on the floor, and the square, □, indicates the time of day during the proceedings of the House of Representatives. The reader wishing to track the progress of a particular section of the law, or to compare the treatment of a provision by different committees, should find useful the section-by-section index and the comparison-of-sections table at the end of volume 3.

MARK E. ANTHONY REISCH,
Environment and Natural Resources Policy Division,
Congressional Research Service,
Library of Congress.

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CHAPTER I

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, PUBLIC LAW 96-510

Public Law 96-510
96th Congress

An Act

Dec. 11, 1980
[H.R. 7020]

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That this Act may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

Comprehensive Environmental Response, Compensation, and Liability Act of 1980
42 USC 9601 note.

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. For purpose of this title, the term— 42 USC 9601.

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "Administrator" means the Administrator of the United States Environmental Protection Agency;

(3) "barrel" means forty-two United States gallons at sixty degrees Fahrenheit;

(4) "claim" means a demand in writing for a sum certain;

(5) "claimant" means any person who presents a claim for compensation under this Act;

(6) "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act;

(7) "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals; 42 USC 201 note.

(8) "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States; 16 USC 1801 note.

(9) "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

(10) "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 102 of section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act, (H) any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the Clean Water Act and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954;

33 USC 1342.

33 USC 1344.

42 USC 6925.

33 USC 1412, 1413.

42 USC 300.

42 USC 7411, 7412, 7470, 7501. 42 USC 7410.

33 USC 1317.

33 USC 1342.

42 USC 2014.

(11) "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section 221 of this Act or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section 232 of this Act;

Post, p. 2801.

Post, p. 2804.

(12) "ground water" means water in a saturated zone or stratum beneath the surface of land or water;

(13) "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act;

(14) "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas);

33 USC 1321.

42 USC 6921.

42 USC 7412.

15 USC 2606.

(15) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

16 USC 1801 note.

(17) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(18) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States;

(19) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party;

(20)(A) "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a) (3) or (4) of this Act, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control;

(C) in the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a) (3) or (4) (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body;

(22) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and (D) the normal application of fertilizer;

42 USC 2011 note.

42 USC 2210.

42 USC 7912, 7942.

(23) "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974;

42 USC 5121 note.

(24) "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of

a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;

(25) "respond" or "response" means remove, removal, remedy, and remedial action;

(26) "transport" or "transportation" means the movement of a hazardous substance by any mode, including pipeline (as defined in the Pipeline Safety Act), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance; 49 USC 1671 note.

(27) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction;

(28) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(29) "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act; 42 USC 6903.

(30) "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act.

33 USC 1362.

(31) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act; and

33 USC 1321.

(32) "liable" or "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

REPORTABLE QUANTITIES AND ADDITIONAL DESIGNATIONS

Regulations.
42 USC 9602.

SEC. 102. (a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released.

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103 (a) or (b) of this title.

33 USC 1321.

NOTICES, PENALTIES

42 USC 9603.

SEC. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

33 USC 1251 note.

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

16 USC 1801 note.

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: *Provided, however,* That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

42 USC 6921.

(d)(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

Rules and regulations.

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any

such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

(3) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

Rules and regulations.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

7 USC 136 note.

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

RESPONSE AUTHORITIES

42 USC 9604.

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contami-

nated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.

"Pollutant or contaminant."

(2) For the purposes of this section, "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 101(14) (A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(b) Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

(c)(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after $1,000,000 has been obligated for response actions or six months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State

will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.

42 USC 6921.

(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under title II of this Act to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.

Post, p. 2796.

(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or

potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from;

(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.

(2)(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this Act, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(f) In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

Post, p. 2805.

(g)(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

40 USC 276a note.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

5 USC app.

(h) Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

Agency for Toxic Substances and Disease Registry. Establishment.

(i) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, and the Administrator of the Social Security Administration, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

(1) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

(2) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(3) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

(4) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing, epidemiological studies,

or any other assistance appropriate under the circumstances; and

(5) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

NATIONAL CONTINGENCY PLAN

SEC. 105. Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum: 42 USC 9605. 33 USC 1321.

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, State pre-

paredness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, at least four hundred of the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities at least one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. Other priority facilities or incidents may be listed singly or grouped for response priority purposes; and

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

33 USC 1321.

Revision and Republication.

ABATEMENT ACTION

42 USC 9606.

SEC. 106. (a) In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

Notice.

(b) Any person who willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Within one hundred and eighty days after enactment of this Act, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 311(c)(2), 308, 309, and 504(a) of the Federal Water Pollution Control Act, (2) sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act, (4) sections 113, 114, and 303 of the Clean Air Act, and (5) section 7 of the Toxic Substances Control Act.

Guidelines.

33 USC 1321, 1318, 1319, 1364. 42 USC 6927, 6928; *Ante*, p. 2344; 42 USC 6973. 42 USC 300j-4, 300i. 42 USC 7413, 7414, 7603. 15 USC 2606. 42 USC 9607.

LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel (otherwise subject to the jurisdiction of the United States) or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; and

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing

directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c)(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, whichever is greater;

(B) for any other vessel, $300 per gross ton, or $500,000, whichever is greater;

49 USC 2001 note.

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979), or rolling stock, $50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 101(14)(A) of this title into the navigable waters, $8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this title.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 of the United States Code or vessels subject to the provisions of title 33 or 46 of the United States Code, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to

any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) No person shall be liable under this title for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State: *Provided, however,* That no liability to the United States or State shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(g) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.

(h) The owner or operator of a vessel shall be liable in accordance with this section and as provided under section 114 of this Act

notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

(i) No person (including the United States or any State) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

7 USC 136 note.

(j) Recovery by any person (including the United States or any State) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

33 USC 1319.

(k)(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when—

Post, p. 2804.

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not

42 USC 6926.

complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection. 42 USC 6921.

(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph. Rules.

FINANCIAL RESPONSIBILITY

SEC. 108. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the 42 USC 9608.

United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

46 USC 91.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

42 USC 6921.

Publication in Federal Register

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of not less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be

established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296. *Ante*, p. 820.

(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(d) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided,* That this subsection shall not alter the liability of any person under section 107 of this Act.

PENALTY

SEC. 109. Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 108, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each day of violation. 42 USC 9609.

EMPLOYEE PROTECTION

SEC. 110. (a) No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act. 42 USC 9610.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to

present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this Act.

(e) The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

USES OF FUND

42 USC 9611.

SEC. 111. (a) The President shall use the money in the Fund for the following purposes:

(1) payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act; 33 USC 1471 note.

(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official; 33 USC 1321.

(3) payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title; and

(4) payment of costs specified under subsection (c) of this section.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b) Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State. *Post,* p. 2809.

(c) Uses of the Fund under subsection (a) of this section include—

(1) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance;

(2) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance;

(3) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances;

(4) the costs of epidemiologic studies, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task

forces, or other response teams under the national contingency plan; and

(6) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(d)(1) No money in the Fund may be used under subsection (c) (1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(e)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section.

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

Regulations.

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential

injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act. 33 USC 1321.

(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

(k) The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection. Report to Congress.

(l) To the extent that the provisions of this Act permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

CLAIMS PROCEDURE

42 USC 9612.

SEC. 112. (a) All claims which may be asserted against the Fund pursuant to section 111 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment.

(b)(1) The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined up to $5,000 or imprisoned for not more than one year, or both.

(2)(A) Upon receipt of any claim, the President shall as soon as practicable inform any known affected parties of the claim and shall attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and alleged liable party or parties can agree upon a settlement, it shall be final and binding upon the parties thereto, who will be deemed to have waived all recourse against the Fund.

(B) Where a liable party is unknown or cannot be determined, the claimant and the President shall attempt to arrange settlement of any claim against the Fund. The President is authorized to award and make payment of such a settlement, subject to such proof and procedures as he may promulgate by regulation.

(C) Except as provided in subparagraph (D) of this paragraph, the President shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in implementing this subsection and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the President that advertising is not reasonably practicable. When the services of a State agency are used hereunder, no payment may be made on a claim asserted on behalf of that State or

any of its agencies or subdivisions unless the payment has been approved by the President.

(D) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the President may use Federal personnel to implement this subsection.

(3) If no settlement is reached within forty-five days of filing of a claim through negotiation pursuant to this section, the President may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim. If the claimant is dissatisfied with the award, he may appeal it in the manner provided for in subparagraph (G) of paragraph (4) of this subsection. If the President declines to make an award, he shall submit the claim for decision to a member of the Board of Arbitrators established pursuant to paragraph (4).

(4)(A) Within ninety days of the enactment of this Act, the President shall establish a Board of Arbitrators to implement this subsection. The Board shall consist of as many members as the President may determine will be necessary to implement this subsection expeditiously, and he may increase or decrease the size of the Board at any time in his discretion in order to enable it to respond to the demands of such implementation. Each member of the Board shall be selected through utilization of the procedures of the American Arbitration Association: *Provided, however,* That no regular employee of the President or any of the Federal departments, administrations, or agencies to whom he delegated responsibilities under this Act shall act as a member of the Board.

(B) Hearings conducted hereunder shall be public and shall be held in such place as may be agreed upon by the parties thereto, or, in the absence of such agreement, in such place as the President determines, in his discretion, will be most convenient for the parties thereto.

(C) Hearings before a member of the Board shall be informal, and the rules of evidence prevailing in judicial proceedings need not be required. Each member of the Board shall have the power to administer oaths and to subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to him for decision. Testimony may be taken by interrogatory or deposition. Each person appearing before a member of the Board shall have the right to counsel. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the President. If a person fails or refuses to obey a subpena, the President may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(D) In any proceeding before a member of the Board, the claimant shall bear the burden of proving his claim. Should a member of the Board determine that further investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding the claim, he may request the President in writing to undertake such activities pursuant to section 104(b) of this title. The President shall dispose of such a request in his sole discretion, taking into account various competing demands and the availability of the technical and financial capacity to conduct such studies, monitoring, and investigations. Should the President decide to undertake the

requested actions, all time requirements for the processing and deciding of claims hereunder shall be suspended until the President reports the results thereof to the member of the Board.

(E) All costs and expenses approved by the President attributable to the employment of any member of the Board shall be payable from the Fund, including fees and mileage expenses for witnesses summoned by such members on the same basis and to the same extent as if such witnesses were summoned before a district court of the United States.

(F) All decisions rendered by members of the Board shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to a member, unless all the parties to the claim agree in writing to an extension or unless the President extends the time limit pursuant to subparagraph (I) of this subsection.

(G) All decisions rendered by members of the Board shall be final, and any party to the proceeding may appeal such a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the arbitral hearing took place. In any such appeal, the award or decision of the member of the Board shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion: *Provided, however,* That no such award or decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any other provision of this Act or under any other provision of law. Nor shall any prearbitral settlement reached pursuant to subsection (b)(2)(A) of this section be admissible as evidence in any such proceeding.

(H) Within twenty days of the expiration of the appeal period for any arbitral award or decision, or within twenty days of the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(I) If at any time the President determines that, because of a large number of claims arising from any incident or set of incidents, it is in the best interests of the parties concerned, he may extend the time for prearbitral negotiation or for rendering an arbitral decision pursuant to this subsection by a period not to exceed sixty days. He may also group such claims for submission to a member of the Board of Arbitrators.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is

liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d) No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

LITIGATION, JURISDICTION AND VENUE

SEC. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs. 42 USC 9613.

(b) Except as provided in subsection (a) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954. 26 USC 1 *et seq.*

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or 42 USC 9614.

requirements with respect to the release of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

(c) Except as provided in this Act, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.

(d) Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

42 USC 9615.

SEC. 115. The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.

Hazardous Substance Response Revenue Act of 1980.

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

26 USC 1 note.

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Hazardous Substance Response Revenue Act of 1980".

26 USC 1 *et seq.*

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes on Petroleum and Certain Chemicals

SEC. 211. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. Tax on petroleum.
"SUBCHAPTER B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4611. Imposition of tax.
"Sec. 4612. Definitions and special rules.

"SEC. 4611. IMPOSITION OF TAX. 26 USC 4611.

"(a) GENERAL RULE.—There is hereby imposed a tax of 0.79 cent a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 0.79 cent a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCT.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985, except that if on September 30, 1983, or September 30, 1984—

"(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000, and

"(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if no tax is imposed under section 4611 or 4661 *Post*, p. 2798.
during the calendar year following the date referred to above,

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).

26 USC 4612.

"SEC. 4612. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

26 USC 638.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

Ante, p. 2797.

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4611.

"Subchapter B—Tax on Certain Chemicals

"Sec. 4661. Imposition of tax.
"Sec. 4662. Definitions and special rules.

26 USC 4661.

"SEC. 4661. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"In the case of:	The tax is the following amount per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

"(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4662. DEFINITIONS AND SPECIAL RULES. 26 USC 4662.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is listed in the table under section 4661(b), and *Ante*, p. 2798.

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4). *Ante*, p. 2798.

"(3) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(4) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(5) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

Ante, p. 2798.

"(b) EXCEPTIONS; OTHER SPECIAL RULES.—For purposes of this subchapter—

"(1) METHANE OR BUTANE USED AS A FUEL.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

"(2) SUBSTANCES USED IN THE PRODUCTION OF FERTILIZER.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED SUBSTANCE.—For purposes of this section, the term 'qualified substance' means any substance—

"(i) used in a qualified use by the manufacturer, producer, or importer,

"(ii) sold for use by the purchaser in a qualified use, or

"(iii) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

"(C) QUALIFIED USE.—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.

"(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

"(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance to the extent derived from coal.

"(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(d) REFUND OR CREDIT FOR CERTAIN USES.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any taxable chemical, and

"(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

"(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

"(B) any person uses such substance, or sells such substance for use, as a qualified substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.". 26 USC 7652.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item: *Ante*, p. 2798.

"CHAPTER 38. Environmental taxes.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1981. 26 USC 4611 note.

Subtitle B—Establishment of Hazardous Substance Response Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND. 42 USC 9631.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Response Trust Fund" (hereinafter in this subtitle referred to as the "Response Trust Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund as provided in this section.

(b) TRANSFERS TO RESPONSE TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, ETC.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954, *Ante*, pp. 2797, 2798.

(B) the amounts recovered on behalf of the Response Trust Fund under this Act,

(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act, 33 USC 1321.

(D) penalties assessed under title I of this Act, and

(E) punitive damages under section 107(c)(8) of this Act.

(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Emergency Response Trust Fund for fiscal year—

(A) 1981, $44,000,000,

(B) 1982, $44,000,000,

(C) 1983, $44,000,000,

(D) 1984, $44,000,000, and

(E) 1985, $44,000,000, plus an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

(3) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—

(A) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

33 USC 1321.

(B) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.

(c) EXPENDITURES FROM RESPONSE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

(A) response costs,

(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

(C) claims for injury to, or destruction or loss of, natural resources, and

(D) related costs described in section 111(c) of this Act.

(2) LIMITATIONS ON EXPENDITURES.—At least 85 percent of the amounts appropriated to the Response Trust Fund under subsection (b)(1)(A) and (2) shall be reserved—

(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).

42 USC 9632.

SEC. 222. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) GENERAL RULE.—Any claim filed against the Response Trust Fund may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount with respect to any such claim out of any source other than the Response Trust Fund.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Response Trust Fund is unable (by reason of subsection (a) or the limitation of section 221(c)(2)) to pay all of the claims payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

42 USC 9633.

SEC. 223. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 221(b)(1) shall be transferred at least monthly from the general fund of the Treasury to the Response Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—The Secretary shall be the trustee of the Response Trust Fund, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House

document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of such Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of such Trust Fund.

(c) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated to the Response Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund. Appropriation authorization.

(2) LIMITATIONS ON ADVANCES TO RESPONSE TRUST FUND.—

(A) AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Response Trust Fund which is outstanding at any one time shall not exceed an amount which the Secretary estimates will be equal to the sum of the amounts which will be appropriated or transferred to such Trust Fund under paragraph (1)(A) of section 221(b) of this Act for the following 12 months, and

(B) ADVANCES FOR PAYMENT OF RESPONSE COSTS.—No amount may be advanced after March 31, 1983, to the Response Trust Fund for the purpose of paying response costs described in section 111(a) (1), (2), or (4), unless such costs are incurred incident to any spill the effects of which the Secretary determines to be catastrophic.

(C) ADVANCES FOR OTHER COSTS.—The maximum aggregate amount advanced to the Response Trust Fund which is outstanding at any one time for the purpose of paying costs other than costs described in section 111(a) (1), (2), or (4) shall not exceed one-third of the amount of the estimate made under subparagraph (A).

(D) FINAL REPAYMENT.—No advance shall be made to the Response Trust Fund after September 30, 1985, and all advances to such Fund shall be repaid on or before such date.

(3) REPAYMENT OF ADVANCES.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in subsection (b) and shall be compounded annually.

Subtitle C—Post-Closure Tax and Trust Fund

SEC. 231. IMPOSITION OF TAX.

(a) IN GENERAL.—Chapter 38, as added by section 211, is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Tax on Hazardous Wastes

"Sec. 4681. Imposition of tax.
"Sec. 4682. Definitions and special rules.

26 USC 4681. "SEC. 4681. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on the receipt of hazardous waste at a qualified hazardous waste disposal facility.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to $2.13 per dry weight ton of hazardous waste.

26 USC 4682. "SEC. 4682. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) HAZARDOUS WASTE.—The term 'hazardous waste' means any waste—

"(A) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on the date of the enactment of this Act (other than waste the regulation of which under such Act has been suspended by Act of Congress on that date), or

42 USC 6921.

"(B) subject to the reporting or recordkeeping requirements of sections 3002 and 3004 of such Act, as so in effect.

42 USC 6922, 6924.

"(2) QUALIFIED HAZARDOUS WASTE DISPOSAL FACILITY.—The term 'qualified hazardous waste disposal facility' means any facility which has received a permit or is accorded interim status under section 3005 of the Solid Waste Disposal Act.

42 USC 6925.

"(b) TAX IMPOSED ON OWNER OR OPERATOR.—The tax imposed by section 4681 shall be imposed on the owner or operator of the qualified hazardous waste disposal facility.

"(c) TAX NOT TO APPLY TO CERTAIN WASTES.—The tax imposed by section 4681 shall not apply to any hazardous waste which will not remain at the qualified hazardous waste disposal facility after the facility is closed.

"(d) APPLICABILITY OF SECTION.—The tax imposed by section 4681 shall apply to the receipt of hazardous waste after September 30, 1983, except that if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure Liability Trust Fund exceeds $200,000,000, no tax shall be imposed under such section during the following calendar year.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 38 is amended by adding at the end thereof the following new item:

"SUBCHAPTER C—Tax on Hazardous Wastes.".

42 USC 9641. SEC. 232. POST-CLOSURE LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Post-closure Liability Trust Fund", consisting of such amounts as may be appropriated, credited, or transferred to such Trust Fund.

(b) EXPENDITURES FROM POST-CLOSURE LIABILITY TRUST FUND.—Amounts in the Post-closure Liability Trust Fund shall be available only for the purposes described in sections 107(k) and 111(j) of this Act (as in effect on the date of the enactment of this Act).

(c) ADMINISTRATIVE PROVISIONS.—The provisions of sections 222 and 223 of this Act shall apply with respect to the Trust Fund established under this section, except that the amount of any repayable advances outstanding at any one time shall not exceed $200,000,000.

TITLE III—MISCELLANEOUS PROVISIONS

REPORTS AND STUDIES

SEC. 301. (a)(1) The President shall submit to the Congress, within four years after enactment of this Act, a comprehensive report on experience with the implementation of this Act, including, but not limited to— 42 USC 9651.

(A) the extent to which the Act and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this Act;

(F) the impact of the taxes imposed by title II of this Act on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this Act. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this Act, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of the Internal Revenue Code of 1954 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund, *Ante*, p. 2798.

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after enactment of this Act, a report identifying additional wastes designated by rule as hazardous after the effective date of this Act and pursuant to section 3001 of the Solid

42 USC 6921.

Waste Disposal Act and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, has determined should be subject to regulation under subtitle C of such Act, (ii) within three years after enactment of this Act, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

Ante, p. 2336.

(b) The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 107 of this Act, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of the date of enactment of this Act, and shall submit an interim report on his study within one year of the date of enactment of this Act.

Ante, p. 2781.

Regulations.

(c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

Ante, p. 2779.

33 USC 1321.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

Review and revision.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of the date of enactment of this Act on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions,

interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law; 42 USC 6921.

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e)(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of enactment of this Act.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after the enactment of this Act, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

EFFECTIVE DATES, SAVINGS PROVISION

42 USC 9652.

SEC. 302. (a) Unless otherwise provided, all provisions of this Act shall be effective on the date of enactment of this Act.

33 USC 1321.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this Act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

EXPIRATION, SUNSET PROVISION

42 USC 9653.

SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985, or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1,380,000,000, whichever occurs first. The Secretary of the Treasury shall estimate when this level of $1,380,000,000 will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954.

Ante, pp. 2797, 2799.

CONFORMING AMENDMENTS

SEC. 304. (a) Subsection (b) of section 504 of the Federal Water Pollution Control Act is hereby repealed. 33 USC 1364.

(b) One-half of the unobligated balance remaining before the date of the enactment of this Act under subsection (k) of section 311 of the Federal Water Pollution Control Act and all sums appropriated under section 504(b) of the Federal Water Pollution Control Act shall be transferred to the Fund established under title II of this Act. 42 USC 9654. 33 USC 1321.

(c) In any case in which any provision of section 311 of the Federal Water Pollution Control Act is determined to be in conflict with any provisions of this Act, the provisions of this Act shall apply.

LEGISLATIVE VETO

SEC. 305. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of title I of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if— 42 USC 9655.

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the dealing with the matter of , which rule or regulation was transmitted to Congress on .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TRANSPORTATION

42 USC 9656. *Ante*, p. 2767.

SEC. 306. (a) Each hazardous substance which is listed or designated as provided in section 101(14) of this Act shall, within ninety days after the date of enactment of this Act or at the time of such listing or designation, whichever is later, be listed as a hazardous material under the Hazardous Materials Transportation Act.

49 USC 1801 note.

(b) A common or contract carrier shall be liable under other law in lieu of section 107 of this Act for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing of such substance as a hazardous material under the Hazardous Materials Transportation Act, or for substances listed pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however,* That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

Ante, p. 2781.

(c) Section 11901 of title 49, United States Code, is amended by—

(1) redesignating subsection (h) as subsection (i);

(2) by inserting "and subsection (h)" after "subsection (g)" in subsection (i)(2) as so redesignated by paragraph (1) of this subsection; and

(3) by inserting the following new subsection (h):

"(h) A person subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, and who is required to comply with section 10921 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall, in any action brought by the Commission, be liable to the United States for a civil penalty not to exceed $20,000 for each violation.".

49 USC 10541.

ASSISTANT ADMINISTRATOR FOR SOLID WASTE

42 USC 6911.

SEC. 307. (a) Section 2001 of the Solid Waste Disposal Act is amended by striking out "a Deputy Assistant" and inserting in lieu thereof "an Assistant".

42 USC 6911a.

(b) The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act, shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code.

5 USC app; 42 USC 4321 note. 15 USC 2601 note. Effective date.

42 USC 6911 note.

(c) The amendment made by subsection (a) shall become effective ninety days after the date of the enactment of this Act.

SEPARABILITY

SEC. 308. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this Act shall not be affected thereby. 42 USC 9657.

Approved December 11, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-1016, pt. I (Comm. on Interstate and Foreign Commerce) and No. 96-1016, Pt. II (Comm. on Ways and Means).
SENATE REPORT No. 96-848 accompanying S. 1480 (Comm. on Environment and Public Works).
CONGRESSIONAL RECORD, Vol. 126 (1980):
Sept. 18, 19, 23, considered and passed House.
Nov. 24, considered and passed Senate, amended, in lieu of S. 1480.
Dec. 3, House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 50:
Dec. 11, Presidential statement.

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[From Weekly Compilation of Presidential Documents, vol. 16, No. 50, Dec. 15, 1980, pp. 2797-2801]

REMARKS ON SIGNING H.R. 7020 INTO LAW. DECEMBER 11, 1980

THE PRESIDENT. Although it's impossible to single out all of the people who've been responsible for this legislation, I would like particularly to thank the ones who were responsible for its drafting and later call on a few to say a word after I finish with the signing ceremony.

Congressman Jim Florio, Senator Jennings Randolph, Senator Bob Stafford, and many others worked on this important bill in its drafting phase, and those others that I'll mention later on worked in a very concerted and effective way in getting the legislation through the Congress.

I would like to express my thanks to Howard Baker, to John Rhodes, on both sides of the Hill, of the Capitol, for making this a bipartisan project, succeeding in their effort even after the election of this year. And if I had time I would thank all eight committees who were responsible for the legislation—[*laughter*]—three committees in the Senate and five committees in the House who had direct responsibility over terms of this legislation itself. And, of course, Senator Bill Bradley and Congressman Mario Biaggi, Congressman Biz Johnson, although I stole him from the Senate later on, former Senator Ed Muskie, Congressman Gore, and in the public sector I would like particularly to thank Irving Shapiro, who, on behalf of the leaders of the free enterprise system of our country, were instrumental in pushing this bill to a final conclusion. This directly affects the chemical industry, and the enlightened attitude of the executives of that industry was a very constructive element.

Almost 1½ years ago I sent to the Congress the original proposal for this landmark legislation, landmark in its scope and in its impact on preserving the environmental quality of our country. It was known as a superfund bill, which began a massive and a needed cleanup of hazardous wastes in our country, a problem that had been neglected for decades or even generations. It fills a major gap in the existing laws of our country and also will tend to focus the attention of the public on this very crucial problem that must be resolved. It provides adequate funding, coming primarily from industry, but also from government, and it establishes certain standards for liability if toxic chemicals are damaging to people or to property.

We responded directly and quickly to some of the highly publicized problems with toxic wastes that are just representative of many similar challenges and problems throughout the country. Love Canal and Valley of the Drums come to my memory right this moment. They are stark reminders of the neglect in our society to deal with a growing problem.

We've created in this country great prosperity and a leadership in the entire world with our chemical industry and with the energy industries, but we had neglected to pay part of the cost of that development. And now, of course, we must face that responsibility. The result here is a bill that substantially meets the criteria that I set out in the original proposal that I made to the Congress a year and a half ago. Most important, it enables the Government to recover from reponsible parties the costs of their actions in the dis-

posal of toxic wastes. While it does not deal with oil pollution in the way that I did propose, I understand that the Congress intends to act on a comprehensive oil pollution superfund similar to this in scope next year.

In my 4 years as President I think everyone who knows me understands that one of my greatest pleasures has been to strengthen the protection of our environment. Along with the Alaska lands bill and other major legislation, this superfund bill represents a fine achievement for the Congress and for my own administration and for the whole Nation.

I now take great pleasure in signing into law H.R. 7020, and I'm proud that the Congress and my administration have come together to produce this timely and urgently needed response. Following the signature I'd like to ask Congressman Florio to speak first, and I'll call on a few others to follow him.

[At this point, the President signed the bill.]

SENATOR RANDOLPH. Why don't we cheer you, Mr. President, while you sign? [Applause]

REPRESENTATIVE FLORIO. I appreciate that applause. *[Laughter]*

Let me just say that I and the other Members of the Congress, as well as the President and this administration, I think can all be very proud of what we've done in this very crucial area, not just this legislation but really to address the whole problem of the inappropriate disposal of toxic materials. Really, that's a two-part problem. Prospectively we have a new regulatory system which is just going into effect now, the Resource Conservation and Recovery Act, and therefore we should have no new Love Canals being created. And this bill, of course, is the second part, which is to go back and clean up what, unfortunately, has been done over the last number of years.

So, this is a very important piece of legislation. The administration should be very proud—and I know they are—of what they've done to bring to the public's attention this problem and the remedial actions that we're taking. I'm very pleased to be part of it as well.

THE PRESIDENT. Thank you, Jim. Senator Randolph?

I'd like to say just a word before Senator Randolph speaks, not because he led the applause for me but—*[laughter]*. Over a 4-year period, the term of any President, there is a series of achievements of which a President and a nation can be proud. And it's an extraordinary thing for me, as I look back on my own administration here, to recall the unbelievably large number of times when basic legislation like this has been sponsored by and supported by and husbanded through the Congress by Jennings Randolph.

A lot of these problems that arose, he very early—long before I got involved in politics at all—could see the threat to our country, and to see the culmination of his longstanding effort is indeed an inspiration to a President and also an inspiration to all those who admire you.

Senator Randolph.

SENATOR RANDOLPH. Thank you very much, Mr. President.

You have been innovative, you've been creative, you've been well reasoned in what you have done so many times as President of the United States. You were very supportive; in fact you brought in a sense this legislation to the Hill. I will say for our committee—and I mention not by name but all members of our committee on Environment and Public Works—I thank them all, many who are here today, because we have never permitted in that committee the so-called mere partisanship and politics to surface. We've had our differences, to be sure, but we have worked together, and we believe that that's necessary.

So, I thank Bob Stafford, I thank all of the members, and Bob, of course, is moving up. *[Laughter]*

THE PRESIDENT. Because of that I want him to speak in a minute. *[Laughter]*

SENATOR RANDOLPH. I don't have this opportunity often enough—captive audiences. *[Laughter]* But I want to thank all the Members on the Hill and Doug Costle—here's Doug—and all of the people who are here that have been so helpful as individuals and through their organizations to bringing this good day. It is a good day.

I wish to add this, that for a long time we've been at this in our committee. We started 3 years ago, and we began to work and churn our way through the many problems that seemed unsolvable, at least in part. Now what you, Mr. President, and others have done is to bring to fruition not the final conclusion, but certainly a bold step forward in this effort to clean up the waste materials, the hazardous waste materials of this country that have afflicted the body politick and made our life less than the quality we hope will sometime come into being.

And so, I'd like to add this: We've been very haphazard over the years, as the American people, in handling and in the disposition of these hazardous wastes. So, again, I'm just so grateful for your words and for the opportunity to have worked with you and all others, all in this room, working towards something that calls for the best from the American people.

THE PRESIDENT. Well, I'd like to call now on the man who helped to resurrect this bill when we thought it might be doomed after the election returns came in, but, Senator Stafford, if you would say a few words.

SENATOR STAFFORD. Thank you very much, Mr. President.

A few months ago I didn't really think that we could achieve this moment, and getting this bill passed reminded me often of something like the "Perils of Pauline" as we tried to steer it from one crisis to another. But thanks to your help and everybody on the committees on both sides of the aisle, we now, I think, have an effective way of coping with the toxic releases in this country. And I'm just elated, as all of us are, that we've been able together to reach this point.

Thank you, sir.

THE PRESIDENT. Thank you.

There are many others on the various committees that I should designate for deserved recognition, but I'd like to call on Al Gore, who I think as far as the leadership in the House, really came to the forefront in the last few days, and on Rules Committee influ-

ence and others he performed a very notable function. Would you say a word, Congressman Gore?

REPRESENTATIVE GORE. Thank you very much, Mr. President.

Just briefly I'd like to personally thank you for those who worked hard on this legislation. It was of invaluable assistance to have the President of the United States on the telephone personally calling Members of the House and Senate, bending their ear on a regular basis, saying, "Vote for this legislation." It wouldn't have been passed without your help. I'd also like to thank the enthusiastic men and women that you brought to this city who worked tirelessly to get this legislation enacted, and they're in the Justice Department and in the EPA and on the White House staff. We couldn't have done it without them either.

Thank you, Mr. President.

THE PRESIDENT. Thank you.

And finally, I rarely call on any of my own Cabinet officers or agency heads to make a comment, but I would particularly like for Doug Costle to say a word or two. He doesn't know I'm going to call on him but——

MR. COSTLE. Thank you, Mr. President.

I think this bill is, in fact, very strong testimony to what has been a truly bipartisan effort in the last year, and I feel really undeserving to be here. The people who've done the work at EPA and on the Hill, the Members of the Congress, who have, in the face of a lot of pressures to go a different direction, who've stuck with it—it just takes an enormous amount of effort and energy to get something like this to happen, and I just feel very moved this morning that it finally came to pass.

Thank you, Mr. President.

THE PRESIDENT. I'd like to say one other word before I leave, and that is that I've noticed some analyses in the press and otherwise that the so-called lameduck Congress has not been productive. The legislation that has been passed in this last month has been truly extraordinary.

When I went down the list of key bills that I wanted to see put into law before I leave this office, back early in November, the list included things that we thought were highly doubtful: The reconciliation legislation, that not only saves more than $8 billion in deficits but also sets a precedent for the future, the paperwork bill, that I signed a few minutes ago, the Alaska lands bill, this bill on superfund, and others is a real testimony to a dynamic, hardworking, and very effective 96th Congress. And on behalf of my administration and the entire Nation, I want to express both my admiration for you and my appreciation to all the Members of the Congress for a superb achievement.

Thank you very much.

NOTE: The President spoke at 9:45 a.m. at the signing ceremony in the Cabinet Room at the White House.

As enacted, H.R. 7020 is Public Law 96–510, approved December 11.

CHAPTER II

S. 1480

11-888 O - 83 - 5

ADMINISTRATION TESTIMONY TO THE SUBCOMMITTEES ON ENVIRONMENTAL POLLUTION AND RESOURCE PROTECTION, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, U.S. SENATE, JUNE 20, 1979

HAZARDOUS AND TOXIC WASTE DISPOSAL

WEDNESDAY, JUNE 20, 1979

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEES ON RESOURCE PROTECTION AND
ENVIRONMENTAL POLLUTION,
Washington, D.C.

The subcommittee met, at 10 a.m., pursuant to notice, in room 4200, Dirksen Senate Office Building, Hon. John C. Culver (chairman of the subcommittee) presiding.

Present: Senators Culver, Muskie, Bensten, and Stafford.

OPENING STATEMENT OF HON. JOHN C. CULVER, U.S. SENATOR FROM THE STATE OF IOWA

Senator CULVER. I am pleased to welcome you this morning to the second round of hearings on hazardous and toxic wastes which are being conducted jointly by the Subcommittee on Resource Protection and the Subcommittee on Environmental Pollution.

In these hearings, we are searching for solutions to the problems of how to clean up old hazardous waste dump sites that now threaten our environment, and for ways to clean up future spills of hazardous wastes.

At the subcommittee's hearings in March, we heard in chilling detail what has happened in some cases when our society has ignored the dangers of old hazardous waste dumps and recent hazardous waste spills.

For example, in Niagara Falls, N.Y., the State has purchased more than 200 homes from people who lived next to the now infamous Love Canal, and hundreds more, farther away from the canal where toxic chemicals were dumped for years, may ultimately have to be abandoned as well.

And in a second widely known case, the James River in Virginia remains closed to fishing due to spills of the deadly, nerve-damaging chemical known as Kepone. Its health and environmental effects have become so widespread that this case is known simply as the "kepone disaster."

These are just two cases. The Environmental Protection Agency has identified more than 2,000 old hazardous waste dumps and abandoned sites that are considered hazards to public health.

Last week, Senators Muskie, Stafford, Chafee, Moynihan, and I introduced, by request, the administration's proposed legislation to create a $1.6 billion fund to clean up oilspills and to contain leakage of hazardous wastes from old dump sites. While it is a good beginning, the administration bill is far from perfect. It does not provide funds for personal injury, medical costs, or third-party

damages other than to fishermen who suffer losses due to an oilspill. The administration bill is financed by a combination of fees and Federal appropriations, and it encourages the States to appropriate funds as well.

In addition, the distinguished chairman of the committee, Senator Randolph, has introduced a bill to create a postclosure liability fund for those hazardous waste sites that meet Federal standards, and the distinguished Senator from New York, Mr. Moynihan, has introduced a hazardous waste fund bill. The committee will carefully review all of these proposals and the various ways in which they deal with problems of hazardous wastes.

In addition, Senator Muskie and I planning to introduce in the next few days a bill dealing with only hazardous wastes, and we hope that a number of members of the committee will cosponsor this legislation.

Enactment of legislation to clean up toxic and hazardous waste dumps and spills is the top environmental priority for this Congress. The problem is clearly enormous, it clearly isn't going to go away on its own, and clearly is only going to get worse unless something is done.

Understandably, there are some budget constraints. However, we would be pennywise and pound foolish to continue to ignore the problem. The economic consequences alone, not to mention the effects on the public's health, can be catastophic.

In the case of Love Canal, for example, the cost of proper disposal of all of the toxic chemicals dumped would have been about $4 million. Already, the State of New York has spent more than $23 million trying to stop the spread of those wastes through the city of Niagara Falls and to relocate exposed citizens, and the suits for damages now total more than $2 billion.

Similarly, the James River kepone disaster could have been averted with sensible controls at limited cost—but now, commercial fishing is prohibited altogether in that river for the foreseeable future.

The problem must be dealt with sooner or later, and it will cost far more—and more people will be injured in the meantime—the longer we wait.

Today, we will hear from Thomas C. Jorling, Assistant Administrator for Water and Hazardous Materials of the Environmental Protection Agency, who will discuss the administration's proposed bill.

In tomorrow's hearings, witnesses from several States will discuss their perspectives on the hazardous waste problem, and on Friday, the committee will hold a hearing in Charles City, Iowa, the site of one of the major hazardous waste dump sites identified by the Environmental Protection Agency.

In hearings scheduled for July 19 and 20, and the committee will hear from a number of interested parties, including industry and environmental witnesses, here in Washington; and a field hearing scheduled for the 29th of this month in San Franciso will be chaired by Senator Chafee.

And now, Administrator Jorling, thank you for taking the time to come before the committee today.

It is my pleasure now to ask if the distinguished Senator from Maine, Mr. Muskie, the cochairman of this hearing, would like to make any remarks.

OPENING STATEMENT OF HON. EDMUND S. MUSKIE, U.S. SENATOR FROM THE STATE OF MAINE

Senator MUSKIE. Good morning.

The Subcommittees on Resource Protection and Environmental Pollution are continuing to hold joint hearings on the release of hazardous substances into the environment.

The subcommittees held 2 days of investigative hearings on this issue in March. And, more recently, Senator Moynihan chaired a field hearing for the full committee at Niagara Falls, N.Y.

Today we begin to discuss solutions to the problems posed by abandoned and inactive waste sites, and other sources that spread toxic chemicals into the environment. Three other days of legislative hearings in Washington have been scheduled, as well as field hearings, which will allow important regional input into this nationwide problem.

We must begin to answer two deceptively simple questions:

First: What shall we do to help cap the growth of chemical contamination of our environment?

Second: What cleanup and compensation should we provide?

A week ago today, the administration announced a legislative proposal called the Oil, Hazardous Substances, and Hazardous Waste Response, Liability, and Compensation Act of 1979. It's a long title for a bill, but the proposal clearly shows that the President is serious about resolving the problems that long years of neglect have caused.

Our present laws are not enough.

We must correct those omissions in the law having to do with past hazardous waste disposal methods.

We must enlarge the Government's authority to respond to environmental emergencies generally.

At the request of the administration, Senators Culver, Stafford, Chafee, Moynihan, and I have introduced the President's proposal, which is now Senate bill No. 1341.

Whatever legislation in this area is reported from this committee in the future, I will work to see that we have the same broad bipartisan support which other important environmental legislation has had.

I look forward to today's testimony.

Senator CULVER. Thank you very much.

We are also joined by the distinguished ranking minority member, Senator Stafford.

Do you have a statement you wish to make?

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. I would like to say at the outset that this is an extremely important problem. I am pleased that the administration has chosen to develop legislation in response to it. The purpose of this hearing is to review that legislation and determine whether

it is adequate to deal with the injuries to health and the environment caused by releases of toxic and hazardous substances.

I believe the committee must be careful to read the legislation before us, not the press releases describing it, because I think this bill may not go quite as far as some would believe. I do not want Tom Jorling to take these remarks personally. I hold him in the highest possible regard, and I am confident that he and I think very much alike on this problem. When Mr. Jorling came before the committee last year seeking support for his amendments to section 311 of the Clean Water Act—which is the law dealing with discharges of hazardous substances into water—I supported him because I knew that he and I thought very much alike. It was thanks to Mr. Jorling's efforts that we managed to put a workable spill control program for hazardous substances on the books. If we write another law on that subject this year much of the credit will belong to him.

In this spirit, I would like to point out what I see as some problems with the bill before us. At appropriate points in his testimony I hope Mr. Jorling will comment.

First, it is interesting to note for the record that those parts of S. 1341 dealing with third-party damages from oilspills represent a retreat from last year's bill. In last year's so-called superfund bill, the administration was willing to pay essentially all third party economic damages resulting from oilspills. But his year's bill restricts payment to those who actually harvest those natural resources which are destroyed or damaged by a spill. Those protected by last year's bill, but left unprotected by this year's, include thousands of men and women whose jobs depend on beach resort trade, commercial fishing, or sport fishing. I am somewhat surprised by this retreat since there seemed to be agreement on the broader coverage last year among members of the Senate and the House, as well as the administration.

There are potentially much more serious omissions, however. Indeed, what this bill excludes may be more important than what it includes. Specifically, the bill would—as I read it—exclude the following types of accidents:

Any release, other than one which is from an orphaned site or into water. This is important because it excludes releases of hazardous substances which are airborne—such as fluorides—or which enter ground water used for purposes other than drinking, such as irrigation. This would also exclude environmental catastrophes such as the release of PBB's in Michigan, later found in the milk of 96 percent of the mothers in that State's lower peninsula.

Also excluded is any release of a harmful substance unless it is one of the substances contained on the applicable lists. This is important because regulatory listmaking will almost invariably lag behind technology. Kepone, for example, was not listed as a hazardous substance until after its discharge into the James River. In addition, in many abandoned sites the waste is a noxious mixture of chemicals difficult and sometimes nearly impossible to identify precisely.

Finally, any release pursuant to a permit issued under the Clean Water Act is excluded, even though such discharges may contain chemicals which experience later proves to be harmful.

Despite these omissions, however, we have been told that even if the bill would ignore some vital problems, it addresses others.

If there is a single incident which has generated the ground swell of support for this bill, it is the tragedy of Love Canal.

The residents of Love Canal suffer from a variety of severe, crippling diseases, but this bill would not pay even the costs of diagnosing their illnesses much less the costs of treatment.

The residents of Love Canal live in homes once worth $30,000, but now worth nothing or next to it. This bill would temporarily relocate these residents, but after 18 months they would be forced to the same cruel choice they originally faced: return to their homes or declare bankruptcy.

Finally, there is serious doubt in my mind whether this bill would provide for the cleanup of Love Canal. Instead, the wastes at the canal would presumably be contained forever, a sort of permanent memorial to man's folly.

Finally, there is the question of liability. Essentially, this bill leaves the victims of hazardous and toxic substances where they now stand: Leaning on the slim reed of common law, as interpreted by the courts of the 50 States. One of the very reasons we sit here today is because those same laws have proved inadequate for speedy and full compensation.

Obviously the administration has made hard choices in this bill. Presumably, those were for good reasons. But I for one would like to know the reasons behind these and other exclusions. Even though this bill may be titled "Oil, Hazardous Substances, and Hazardous Waste Response, Liability, and Compensation Act of 1979," it appears to me to provide too little compensation, and even less liability for an insufficient number of hazardous substances or wastes. It may help stabilize some hazardous waste sites, but it does precious little for the people who are injured by them. Hopefully, during the course of our deliberations, we can correct some, if not necessarily all, of these inadequacies.

Senator CULVER. Mr. Jorling, it is a pleasure to welcome you here this morning. Why don't you begin.

STATEMENT OF THOMAS C. JORLING, ASSISTANT ADMINISTRATOR, WATER AND WASTE MANAGEMENT, ENVIRONMENTAL PROTECTION AGENCY

Mr. JORLING. Thank you very much. It is a pleasure for me to be able to be here today to discuss with you the administration's proposed legislative response to some of the most significant environmental and public health problems facing us today—spills of oil and hazardous materials and the menace of uncontrolled hazardous waste disposal sites.

I have prepared a lengthy statement describing our proposed comprehensive approach, the "Superfund" bill, in detail, which I would appreciate having inserted in the record of this hearing.

Senator CULVER. Without objection, your full statement will be placed in the record. [See p. 32.]

Mr. JORLING. I would like to confine my remarks today, however, to the most critical issues and how the administration has determined they should be confronted.

Releases of hazardous wastes from abandoned and inactive disposal sites are perhaps the most serious environmental problem facing the Nation today. Recent months have brought to public attention a series of incidents of improper hazardous waste management.

The tragedy at Love Canal has demonstrated all too clearly the unacceptable costs of inferior hazardous waste disposal—not only the staggering financial cost of containing and cleaning up the wastes, but also the pain and suffering borne by the 200 families evacuated from the site. I think you have had onsite hearings and testimony from some of these individuals.

The contamination by chemicals of 54 public wells serving 100,000 of Long Island's residents; the discovery of up to 20,000–30,000 barrels of discarded, leaking and unlabeled wastes in the "Valley of the Drums" in Kentucky; the suspected leaching of arsenic and arthonitroanitive into the water supply of 300,000 people in Charles City, Iowa; and scores of other cases in States throughout the Nation are revealing a pattern of current and past improper hazardous waste disposal which is both alarming and dismaying.

For decades, thousands upon thousands of tons of hazardous chemical wastes have been deposited in our environment. The sites where they are dumped, with their contents of long-lasting chemicals, now represent lethal time capsules which year by year release their toxic contents into our surface waters, our groundwaters, and seriously degrade our landscape and that essential element of our life support system—our water supply.

The effects of spills of oil and hazardous substances are similar to those produced by abandoned waste disposal sites—contamination of surface and ground waters, including drinking water supplies, fish and wildlife kills, destruction of vegetation, threats to public safety because of fires or explosions, and direct exposure of people to hazardous substances.

The scope of the spill and abandoned site problems is staggering. During the past 5 years, there have been about 11,000 oilspills per year in the United States, totaling about 17 million gallons per year. The number of spills of hazardous substances is not so clearly established, as mandatory reporting of such incidents is not yet required, but an analysis of the data sources available indicates that about 3,500 incidents per year involving chemicals have the potential of releasing significant quantities of hazardous substances onto land or water.

The estimated annual costs of oil pollution removal are about $9 million, a figure which does not reflect any spill or spills of catastrophic proportions. Again, data for hazardous substances spills is not as clear, but the Federal cleanup costs could range from $6.5 to $26.1 million per year.

I should note that this figure is based upon the assumption that 90 percent of the cleanup costs would be borne by industry. A slight decrease in industry participation could easily result in a doubling or tripling of the Federal costs.

I also want to stress that these figures do not include administrative costs, costs of long-term environmental restoration, third-party damages, or evacuation and public safety costs.

Finally, these figures exclude the costs of spills of less than 100 gallons, many of which, such as those involving pesticides, can have the most severe consequences for health and the environment.

It is even more difficult to estimate the full extent of the problem caused by releases from abandoned disposal sites. A recently completed EPA study, done under contract and based on very rough data, estimates a range of 30,000–50,000 sites containing hazardous wastes, of which 1,200–2,000 may present potentially significant problems.

The study also attempted to estimate costs associated with remedying the situation at sites with potentially significant problems. Excluding cases involving radioactive wastes, and cases judged to have no costs, the range of costs of emergency measures for containing the wastes nationwide—based upon 1,200–2,000 problem sites—was estimated to be $3.6 to $6.1 billion.

For ultimate remedies, including offsite treatment and disposal, the nationwide range was estimated to be $26.2 to $44.1 billion. These estimates do not include compensation for property damage, direct or consequential economic losses, or personal injury. While these are the best figures now available, they are very rough and should only be used as ballpark estimates.

Our current statutory authority for coping with these interrelated problems is, unfortunately, inadequate. The Resource Conservation and Recovery Act, or RCRA, focuses on present and future hazardous waste disposal practices and, while it contains an emergency powers clause, it requires an indentifiable, financially solvent liable party and prolonged judicial action for its successful invocation.

Section 311 of the Federal Water Pollution Control Act provides for the reporting of discharges of oil and hazardous substances, establishment of penalties, and Federal cleanup and mitigation of spills. The costs of cleanup are paid by a revolving fund and then recovered from the liable party.

Both the Department of Transportation and EPA have acquired valuable experience implementing section 311, but it is subject to some limitations which seriously detract from its usefulness. I might add, however, that the administration's bill is based on section 311 of the act.

First, it is limited to spills or threats of spills into navigable waters, and thus does not address spills affecting soil or air, but not navigable waters.

Another limitation relates to the size and nature of the fund provided by section 311; it was authorized at a level of $35 million and currently contains about $5 million. The fund was established by appropriation and is maintained by any recovered costs and additional appropriations. Even if it were applicable to costs resulting from abandoned hazardous sites, it would be grossly inadequate in most cases.

The Federal Water Pollution Control Act also contains an emergency powers provision. Section 504, which is broad enough to reach many of the problems we have discussed, but its authorization is limited to $10 million, and the administration has not requested, nor has Congress provided, funding for the section.

In brief, although we are taking and will continue to take maximum advantage of existing legislation, we do not have the statutory tools to do the job. Our superfund bill, which the President personally transmitted to the Congress is designed to replace this patchwork approach with a comprehensive, adequately funded scheme. It incorporates and builds upon the existing authority and experience of section 311, the emergency powers of section 504, and the liability and limited compensation approach developed and submitted to the Congress by the Department of Transportation in the proposed superfund legislation for oilspills.

The bill addresses releases to the environment of oil, hazardous substances, and hazardous wastes from spills and from inactive and abandoned disposal sites. It establishes a comprehensive and uniform system of notification, emergency governmental response, enforcement, and liability for such incidents, as well as third-party compensation for spills by:

First, requiring that the Government be notified of spills and the presence of inactive and abandoned hazardous waste disposal sites;

Second, empowering Government to clean up and mitigate the pollution without delay in incidents where the liable parties do not respond adequately or cannot be quickly identified;

Third, enforcing higher standards of care by providing for recovery of Government costs of response and third-party compensation from liable parties, as well as penalties, and

Fourth, providing for quickly compensating victims of spills for damages to property and the loss of opportunity to harvest marine life.

Upon learning of a spill or a release of wastes from an abandoned or inactive disposal site, the Government would be empowered, in advance of judicial action, to induce liable parties to prevent or clean up and mitigate the problem. If necessary, the Government could act in their place without delay, obtaining the needed moneys from the fund, which would then recover the costs. Even where a responsible, economically viable party could not be identified, Government response could still be taken immediately to protect public health, safety, or a significant environmental resource. The legislation would also provide compensation to victims of spills in advance of judicial action.

I want to make it clear that although the proposed legislation does provide limited third-party damages for spills, no third-party damages are provided for releases from uncontrolled hazardous waste disposal sites.

The reason for this is that the amount of funds which can be raised and made available for inactive and abandoned sites is limited and the projected cost of cleaning up is enormous. The costs associated with third-party damage claims at these sites could be huge—at Love Canal, they may surpass $2 billion.

Given limited funds, the administration believes that the first priority must be to prevent exposure of people to toxic chemicals at hundreds of sites, as opposed to compensating damaged third parties at a few sites.

Structurally, the legislative approach taken in the bill is to extend the DOT bill's coverage, which is limited to discharges into navigable waters to releases to the environment in general, and to

include spills of designated hazardous substances. The notification, emergency response, penalty and spill prevention provisions of section 311 are also modified and incorporated. This combined approach is then used as the basis for addressing inactive and abandoned waste disposal sites.

The fee system is based upon the belief that the fee should come, to the extent possible, from those segments of industry and consumers most responsible for imposing the risks upon society. The fees cover petroleum oil, petrochemical feedstocks and certain highly toxic and/or high volume or frequently spilled inorganic elements and compounds, including heavy metals, halogens, acids, and bases. All oil, almost all hazardous substances, and most hazardous wastes are products of the industries affected by these fees.

Even at its maximum level, the proposed $400 million fee system is expected to have a negligible impact on the U.S. economy. The size of the fund is small both in relation to the overall economy and in relation to the industries paying the fee. Our analysis shows that economic dislocations or shifts in feedstock or resource use will not result from the system proposed by the administration.

Turning to one final major aspect of the legislation, I would like to point out that the bill represents a judiciously balanced attempt to tackle a problem of national dimensions without intruding into areas of legitimate State concern.

With regard to spills of oil and hazardous substances, States are preempted from setting up their own liability and compensation schemes only to the extent that liability and compensation are provided for in this bill. With regard to abandoned or inactive sites, there is no preemption at all. Where the Federal Government provides emergency assistance and containment, the role and financial responsibility of the affected State is spelled out. We believe this is a uniform, yet realistic and effective approach.

Further details of the response mechanisms, the workings of the fund, claims procedures, the raising of fees, and the role of the States are spelled out in the statement which I have submitted for the record. I will also be happy to answer any questions you may have, either now or later in writing.

I would like to end, however, by emphasizing as strongly as I can how critical the need for this legislation is. I applaud the prompt consideration you are giving it and hope for its speedy enactment. In a matter so crucial to the public health and to the environment, we cannot afford delay.

Thank you, Mr. Chairman. I would be happy to respond to questions.

Senator CULVER. Thank you very much, Mr. Jorling.

Just to clarify the extent of your legislation with regard to liability and anticipated costs and damage compensation, as I understand it, for hazardous waste the administration bill provides for emergency response and containment for 1 year. Is that correct?

Mr. JORLING. It might be well to do this by both example and explanation.

We provide emergency assistance for abandoned sites from the fund to the tune of $300,000. If the costs go above that, then it

shifts into the definition of containment. The basic definition of emergency assistance is that cap of $300,000.

The remaining authority would be in the area of containment. Containment includes those activities which are necessary to prevent further release or further movement of the chemicals which might expose the public to them, to confine them in their present state. That could include a permanent remedy, but there is cost limit.

The limits require State participation if the cost of containment activity is more than $200,000 per site. In that event, there is a requirement that the States provide a 10-percent match to the 90-percent contribution from the fund to the amount necessary to provide containment. There are other conditions upon the States. One is that they have to bear the operation and maintainence expenses for containment activity after the first year.

If I can go back and summarize with some numbers how it would work, let's assume a hypothetical site where the Federal Government provided emergency assistance to the tune of $300,000, and the total containment costs were $2.2 million. I am trying to come up with some numbers that do not affect my limited ability to use math. A total of $2.2 million was necessary for containment. Of that, the Federal fund would pay $200,000 without any State match, so already the fund has contributed $500,000 to the repair of that site.

The Federal fund would pay $1.8 million, or 90 percent of the remaining $2 million. The State would have to put in the 10-percent match of $200,000.

So, for the overall emergency assistance and containment costs, the Federal contribution would be $2.3 million and the State's contribution would be $200,000, and it would have to pay 19 years of O. & M. if the system required that. Assuming $20,000 per year in this example, it would be $380,000.

Let me also put it in the context of a more real world situation, the Love Canal. The Love Canal's permanent remedy, to the best of anybody's judment, would be the exhumation of the waste, to physically remove that contaminated material and transfer it to an adequate disposal site somewhere else. The cost for that type of activity has been projected to exceed $250 million. What has been done by the State in that case is to apply emergency and containment activity, collecting the wastes and bringing them to a central treatment system on site, and then discharging the material into the publicly owned treatment system servicing the area. That activity would be the type of activity anticipated in the containment activity we are discussing here.

The Federal Government would pay for the capital costs and the first year of operation and maintenance on a 90–10 basis. The State of New York would be required to pick up the O. & M. expenses of that system after the first year.

That is the kind of mechanism we are anticipating, and we think that it is the most prudent possible investment of our limited resources. The States are going to remain, in effect, the responsible agents for any further remedy under this program.

Senator CULVER. In our March hearings, as you have alluded to and I did in my opening statement, we had testimony, of course, as

to the very, very serious adverse health consequences as a result of that situation, and, in addition, the costs of moving some 200 families.

Your bill would not pay out-of-pocket medical bills.

Mr. JORLING. No; the administration's proposal does not, in the area of abandoned and uncontrolled sites, provide for any third-party costs. It is not because we are thickskinned, but because we made the determination we could protect more of the public by containing more of these sites than by addressing our scarce resources to one, two, or three of these sites.

Senator CULVER. With all of your efforts to calculate costs, impact on industry and so forth, have you done anything to factor in the likely out-of-pocket medical costs? You said that the proposed fee schedule in the administration's bill will not have that serious an economic impact. Then you say we don;t have enough money to cover out-of-pocket medical costs.

I realize the need to have some sort of rational legislative containment to avoid open-ended costs. But, I wonder about things like out-of-pocket medical expenses. What kind of additional costs are you adding if you include that kind of damage?

Mr. JORLING. Mr. Chairman, we do not have that kind of order of magnitude projection. We had considerable difficulty in generating cost figures associated with just the clean up and containment activities.

We do believe, however, including such third party costs would radically change the dimensions of this program. If we look at some examples where the present legal system is providing some evidence, if we take Love Canal's $2 billion in claims as at least indicative of that situation, we could clean up an additional 555 sites for that money. We have made the judgment that is the more prudent investment of the Federal fund at this time.

Medical costs here are very, very difficult to quantify. If we take the site in Iowa, estimating the medical damage from a lifetime exposure to a contaminant which is a carcinogen is extremely difficult.

Similarly, in Tennessee, where ground water and drinking water supplies are contaminated by carcinogens, it is difficult to quantify the medical expenses because they may not be incurred for 50, 60, or 70 years, assuming again, for purposes of law, you could draw the necessary cause-and-effect relationship between the later illness and the exposure. So, it is very difficult to measure.

I think what we are saying in our proposal is that we do not recommend the administration bill as a complete solution. You are going to work your will on it, but we also don't think the Congress first effort in responding to this area is going to be complete. We are talking about a staged program. The first stage of this program in the first 4-year period would be to allow the Government to respond to as many sites as possible, to prevent further release and exposure of the public.

Senator CULVER. Speaking of that LaBounty site, if leakage from that LaBounty dump becomes serious, it would not become a spill under this bill. It would be classified as damage from an inactive dump site. Is that correct?

Mr. JORLING. One of the things we are trying to repair in the existing system of law is the requirement we make fine connections between the type of release and the environmental contamination that occurs to determine how to respond.

Senator CULVER. I realize how necessarily imperfect so many of these estimates necessarily have to be. But do you have enough confidence in methodology to give us some indication of the cost and the size of fees that would be needed for third-party damages and medical bill payments?

I recognize the speculative nature of many projections, but I wondered if you have enough confidence to offer some guesses in that area.

Mr. JORLING. We have what is obviously a very weak data base simply because the deposit of these types of materials on the landscape was neither under State nor Federal control. Because it was out of sight and out of mind, literally, it is the last of the environmental problems to be addressed. We have very little data.

What we did was take a survey of our regional offices and the States therein to generate an information base upon which to base our contractor study. We feel the low end of the cost range is conservative and prudent, and it is highly unlikely the programs would require anything less than the low end. We feel somewhat confident there. Take Love Canal and Valley of the Drums, wherever a site in a region receives media attention, the first thing that happens is the State agencies are informed of other sites in that immediate area, so we are up to six sites in the Love Canal area. In the Kentucky area, we are up to seven sites containing the same type of material. So, the magnitude of the problem we feel is that large and requires that kind of containment response.

We have no confidence whatsoever in our ability to predict the magnitude of third-party damages associated with these, nor even how to measure them.

Senator CULVER. It seems to me that when you look at this problem that you have to anticipate attacking it on a whole medley of fronts. One is to eliminate every toxic element possible in the basic contributing feedstocks or whatever the chemicals might be.

Second, at least prospectively, we have to develop technology to the point where we have some confidence in our ability to contain these wastes.

Third, we need technology to treat some of these leaching materials and or to inject chemicals that will solidify in the bottom of some of those sites and help prevent leakage.

To what extent do you feel confident we are aggressively trying to attack this across the board? And what kind of progress do you think we are making in this admittedly very pioneering area of activity?

Mr. JORLING. I think it is safe to say with present and future producing activities that the application of the Clean Air Act, the Water Act, hazardous waste management and other factors, leads to the integration of all those factors into much tighter systems of production. I think that is working. The jury is still out, but we do have some evidence now that more and more firms are going to closed cycle methods of production.

So, I think we are working quite well there, and there is a tremendous amount of R. & D. supported by our agency and other Federal agencies as well as the industrial sector in achieving that kind of production.

In the area of abandoned sites, if we take the track record that has been associated with the spill program since 1972, there has been very rapid development of technological solutions or technological means of addressing these problems.

For instance, take the current oilspill occurring off the coast of Mexico from a runaway well. There are now what are called third-generation disbursements being used on those oils. Those disbursements, in contrast to the first and second generation, are not toxic and are working. We will have to reevaluate after we see. That oil is not causing damage to the adjacent shoreline, so there is very rapid technological development.

We think that the LaBounty development again is an example. The first estimate there for exhumation of that site, which is in a flood plain, was in the order of $35 million to $40 million. With the R. & D. joint enforcement effort there, we feel that we can provide for somewhere in the neighborhood of $2 million a solution to that situation.

Senator CULVER. What would be the larger exhumation approach? Would that be physically digging it up?

Mr. JORLING. Physically removing it and transporting to a site that would not release to the environment, a safe site.

Senator CULVER. That is $35 or $40 million?

Mr. JORLING. That is right.

Senator CULVER. The alternative is a pump and injection?

Mr. JORLING. It is a pumping and injection to solidify the material and to cap it.

Senator CULVER. And the cost estimates on that?

Mr. JORLING. $2 million. We do see rapid technological development as people look at these sites and come up with cost-effective methods. Some sites which are very near to population centers may require full exhumation.

Senator CULVER. Senator Stafford?

Senator STAFFORD. I defer to Senator Muskie.

Senator MUSKIE. I am not sure this legislation has the added deterrent effect, that would provide the added deterrent law to effectively discourage not only spills, but the deposit of hazardous materials in sites which are environmentally dangerous.

You spoke at some point here, in connection with spills, of the fact that your program was designed to impose 90 percent of the liability on the spillers.

I wonder if you would describe that more specifically.

Mr. JORLING. With respect to spills of oil and hazardous substances, the same features that I believe induce a high standard of care in the transport, storage, and what have you of materials are retained from section 311; namely, the authority for the Government to respond is there.

Failure of the owner-operator who discharges the material to repair it on his own, consistent with the contingency plan, may cause the Government to act to remove and charge back the costs.

So there is the inducement that they can control their costs if they repair or prevent that spill. If the Government does it, it is usually higher cost.

With abandoned sites, there are two aspects to this question. One is that there is no longer an activity occurring where we can induce a high standard of care. Where there is a viable property owner who has created and used a site, viable in the sense of capable of spending moneys to repair the site, and the Government says take the following actions to protect the public health and welfare, and the owner refuses to do so, the Government may do so. There is a provision in the bill for a punitive damages type of recovery which authorizes the court to impose 2½ times the costs of the Government in that activity.

That only applies where there is a viable liable landowner. We do believe, however, that it will operate very effectively where a site exists on the land of a major chemical or petroleum chemical corporation. That feature should drive them to undertake the necessary steps to repair the situation.

With respect to the management of hazardous waste generally in the system now, the high standard of care will flow from the regulatory development effort that is underway under RCRA. We think that is a regulatory effort which does not reduce, but in fact increases the standard of care in the management of these materials.

We have attempted not to have this proposal or any other of our proposals interpreted a "we are paying our fee and, therefore, we can be somewhat sloppy about the way we conduct our business. We have an effective fee to pollute."

Senator MUSKIE. This fee applies only to 1,200 feedstock manufacturers?

Mr. JORLING. I can explain the fee system——

Senator MUSKIE. Before you get to that, I want the explanation. It applies to some 1,200?

Mr. JORLING. That is correct.

Senator MUSKIE. How many potential spillers?

Mr. JORLING. Those are plants.

The number of potential spillers, once the material moves from feedstock into distribution, it becomes staggering. It involves millions of people involved in the movement of material.

Senator MUSKIE. What type of deterrent is there in this fee approach? The fee is imposed on the foodstock so the spillers down the line have a relatively small one. How much a year are you collecting, $400,000?

Senator MUSKIE. So the impact on the ultimate user of a hazardous substance, and how much he could spill or deposit on an unacceptable site, is pretty minimun. I don't see any deterrent in the fee system.

If you want to describe the fee system in response to that question as well as getting at the deterrent point, I would be glad to have you do so.

Mr. JORLING. The basic point is this fee is not designed to be a deterrent. This fee is designed to generate revenues for the Government to respond.

The deterrent aspects come from the fact that if the Government spends money out of that fund, there is recovery back against those who discharge, plus penalties. There is also authority to have spill prevention plans, best management practice, and the like.

This fee system is not designed to be a deterrent, nor is it designed to be a fee that can be construed as a right to pollute. It is liability provisions that are the deterrent.

Senator MUSKIE. You make the point in your statement that spills of less than 100,000 gallons, including those involving pesticides, can have the most severe consequences. A spiller of 100,000 gallons could be a very small spiller.

What deterrent is there in this whole scheme to deter people, or impose on people in a meaningful way, a sense of responsibility of spills of that size?

Mr. JORLING. The deterrent mechanism for any spill, whether it be 1 gallon or hundreds of thousands of gallons, is that when the Government acts to respond, those costs are charged back, plus penalties. That is the basic incentive system.

The fee system here is not——

Senator MUSKIE. I guess the point I am getting at, if you have millions of potential spillers, any one of whom could be involved in spills in the magnitude of 100 gallons or less, the only deterrent is the possibility of being caught. It does not seem to be that your sanction has the effect of imposing standards of care in handling the stuff. That is what I am talking about.

After the fact, the imposition of liability, especially on the very small spillers——

Mr. JORLING. Under section 311 of the current law, there are provisions to induce a high standard of care. This proposal would not in anyway change those provisions.

All it does is change the scheme for providing the resources necessary to implement that program from the general taxpayer to a fee system on the industry itself.

All other aspects of the program which induce high standards of care are unchanged. The fee is only a way of generating resources. It is not a deterrent.

Senator MUSKIE. That was my conclusion before I asked the question. That is why I asked the question.

Senator STAFFORD. Would the Senator yield to clarify one point?

Senator MUSKIE. Yes.

Senator STAFFORD. I understood Mr. Jorling and the Senator from Maine to say the system would produce $400,000. My impression was $400 million.

Mr. JORLING. That is correct. It is $400 million.

I think it would be helpful to run through the basic fee system.

Senator MUSKIE. We have gotten used to so many zeros in the Budget Committee that the difference between $400,000 and $400 million tends to disappear.

Mr. JORLING. There were three basic criteria which we attempted to apply in establishing our fee system. First was equity, a nexus to the problem. The second was administrative complexity in the collection system. Can you penetrate our very complicated commercial system and do it efficiently without creating the need for a huge bureaucracy to apply rulemaking, and guidance, and interpre-

tations to collect the fee? The third feature was economic impact on the basic systems of production that exist in this country in oil and chemicals. We have attempted to do that. We think we have achieved that.

The basic feature of the feedstock approach—let me go back a moment. There are three sectors of industry upon which the fee will be levied. The first is the oil industry, and that fee would be up to 3 cents per barrel. We estimate to raise the $100 million we identify to be collected from the oil industry would be in the neighborhood of a penny or 1.27 cents per barrel.

The second fee is assessed on the organic——

Senator CULVER. The only correction you want to make is 1.27 in place of 3 cents?

Mr. JORLING. The authority would be up to 3 cents, but our estimates based on the 1978 price of crude oil at $16 plus, is that, to generate $100 million, it would be 1.27 cents.

On the organic chemical side, we have identified in the feedstock mechanism a number of gates or access mechanisms from which the fee can be collected quite efficiently. That fee would raise $200 million, and that would be based on the quantity of that feedstock. Again, our estimates are that the economic impact of that would be minor.

The third industry sector would be inorganic chemicals, and the fee would be based on production volume. Again, on those chemicals a fee per pound of production also would have no economic impact or little economic impact in the conventional sense—closure rates, shifts in production, and what have you.

The feature of this combination of fees that addresses the second criterion I mentioned, is that the maximum number of gates is roughly 1,500 if it is done on a plant-by-plant basis. If it is done on a company-by-company basis, it could be as low as 500, so there would be 500 access points in the system to collect this fee. We think that would be an extremely efficient collection mechanism which avoids the extensive bureaucracy for collection we would need if we moved from the feedstock and production end into the next higher level or levels of the production system.

In addition to that $400 million, there is a $100 million authorization for a contribution from the Federal Treasury, and the basic reason for that is threefold—certain Federal policies encourage certain kinds of disposal practices; many of these sites are located on Federal lands; and, third, the discipline of the Federal budget system would insure that the fee and the fund do not simply become free money that people can use for one or another activity not anticipated by the statute. It brings in a discipline over the budget which we think is attractive.

Senator MUSKIE. It seems to me on this whole question of deferring spills and imposing liability for them, you have three points of attack—(1) to deter the spills in the first place; (2) adequate information as to when spills take place; and (3) imposing liabilities for consequences of spills.

There may be others, but it seems to me those three elements in some way are essential if you are really to get control of the problem.

I understand abandoned sites is something that happened in the past and you have to have a policy for dealing with them. We are also concerned, and perhaps even more importantly concerned that the problem does not reoccur or continue in such magnitude. Given the growing complexity of our society and the growing number of hazardous substances being developed, the magnitude of the problem may have more to do with the future than the past, with respect to abandoned sites, and you have given us the numbers and horror stories there.

Now, with respect to these three points, can you tell us briefly in what way you deter spills with respect to the millions, and that is the figure you used, of potential spillers, how you assure that the appropriate agencies such authorities are notified of spills when they take place, and you are talking about spills of conceivably less than 100 gallons; and, three, by what means do you assure the liability or threat of liability is meaningful to all of the potential spillers getting caught? If you have millions of spillers, is it much of a deterrent?

It is not with respect to much crime, including murder. How do you impose the deterrents, notification, avoiding the creation of liability or consequences upon other people resulting from a problem of this magnitude?

Mr. JORLING. I think basically, with respect to spills, we incorporate without change the requirements of section 311, except to broaden them to abandoned sites. Upon learning of a spill, the owner-operator has a duty to immediately notify the Government, and failure to carry out that duty subjects that person to a criminal penalty. Second, we have some language in there that the failure to notify the Government removes limits of liability on the cleanup end. That mechanism, based on the track record in the oil program and the beginnings of the track record in the hazardous program, works.

One of the unfortunate aspects, however, is that both the Coast Guard and ourselves must admit we cannot respond to all of the spills we are notified about.

Senator MUSKIE. That is spills on water?

Mr. JORLING. Those are spills triggered under section 311 which create either a threat to navigable waters or have in fact reached navigable waters.

Senator MUSKIE. Do you think you would have more difficulty of getting notification of spills on land?

Mr. JORLING. I don't believe so.

Senator MUSKIE. Or hazardous substances?

Mr. JORLING. The evidence we have seen from the chemical and oil industries is that they have advised their employees to notify the Government of a spill no matter where the spill is released to. I think that approach is a prudent one and one to respect.

Senator CULVER. How about leaching, which is far more difficult? What liability is placed upon the owner-operator to avoid occurrence of that? Is periodic testing required, or will that wait until the public harm occurs and health authorities bring it to your attention?

Mr. JORLING. On the controlled site side, the duty to give notice on the part of the owner-operator is not when it is released to the

environment, because he may not know. Rather, it is the presence on his land of that kind of material. If he knows that he has that material on his site, on his land, he has a duty to give notice.

It is a one-shot notice requirement, but we think it is a much more efficient system than we are presently utilizing, where we go out to find them or hear of them at random.

Senator MUSKIE. There has been a recent circuit court of appeals opinion which appears to limit the requirements. Have you seen that?

Mr. JORLING. There is a circuit court opinion holding individuals are protected by the fifth amendment from giving notice under section 311 and having it used against them in a civil, not just a criminal action. That ruling was not extended to corporations.

We are troubled because there is language in section 311, which is carried forward in our proposal which attempts to use language which distinguishes the information and the use to which that information can be put in a criminal prosecution, so it is our intention to appeal that suit.

Senator MUSKIE. That could be very limiting.

Mr. JORLING. That is correct.

Senator MUSKIE. Are you also examining ways of avoiding that judicial limitation?

Mr. JORLING. We are examining ways. It was our belief, and it continues to be our belief, that the provision which prevents the notice from being used in criminal prosecution was sufficient to protection fifth amendment rights, but we will have to reexamine that in light of this decision.

On the liability side, the provision incorporates—again, let me focus first on the spill side—the only very limited defenses to liability, like those incorporated in section 311, for example an act of God.

On the abandoned site side, liability extends back to the user, to the extent that can be ascertained. We hope to induce the same rapid cleanup by the present owner-operator of that site that the section 311 provisions induce, where the track record has been quite good.

It is possible to interpret the data on oil, which show a dramatic reduction in spills, as a comment on the effectiveness of 311, as well as to the spill prevention plans written for the discharge sites.

The programs seems to be working, and if we can extend it further we think there is in the system an inducement to high standards of care.

Senator MUSKIE. I would like to ask a more specific question. You have made it clear the fee system is not designed to generate any deterrent. How closely did you examine the possibility of doing it for that purpose?

In other words, it seems to me, and I can understand the complexity of it, and the bureaucratic implications of it but, at the same time, if you impose it as a deterrent at the disposal end of the hazardous substances, couldn't it be effective?

Mr. JORLING. There are a couple of elements in the fee system which are attempts to induce recycling. If the producer of lead, for example, uses as his raw material recycled lead, there is a reduction in his fee. There is that.

If we added other inducements in establishing the fee, it is my belief we would run up against some major flaws.

First of all, and this is a personal belief, fees become measured by the least common denominator to pay, and the fee in fact becomes a right to pollute, not an inducement to a high standard of care.

I don't believe the fee can operate in our very diverse commercial system to induce high standards of care because of the fact we have little and big operators. What is painful for a little operator is not even a noise level for the big operator.

I think the penalty and liability provisions are a much superior way to establish a high standard of care than the use of an economic disincentive in the fee.

Senator MUSKIE. I have just one more question. It seems to me that the fee you are imposing is very modest indeed with respect as a burden, and the fund is very limiting and the consequences which it will cover or clean up is larger than all that the fund covers; is that right?

Mr. JORLING. In the case of spills, it would also cover third-party actions—property damage and economic livelihood to commercial fishermen. In the case of abandoned sites, only emergency activity and containment activity are covered.

Senator MUSKIE. Not damage to health or personal injury?

Mr. JORLING. No.

Senator MUSKIE. What would it cost to include that additional liability overall and how much of an additional burden would it be in the fee system?

Mr. JORLING. Part of the reason we did not include it is that we don't have any data upon which to give you an estimate. If we look at the range of situations occurring, the third-party claims, no matter how you define them, are staggering. They can reach astronomical proportions.

Senator MUSKIE. You have made that statement before. You are consuming a resource measured by 3 cents a barrel. If you double the resource or triple it, I would like to know what the balancing—you have made the balancing judgment. I would like to know on what basis we might consider a balance of a higher figure that would spread the burden of the cost to the individual on a personal health basis and a burden that would mean something to those who created the problem.

It seems to me we have to look at that. That is the tragedy of Love Canal. It is not the cleanup cost. The tragedy is the damage done to individuals.

Mr. JORLING. And common law remedies might be adequate.

Senator MUSKIE. If this law were in the books now, what difference would it have made to people at Love Canal?

Mr. JORLING. Only the extent to which it would prevent future exposure.

The bill contains provisions for an early look at the program to determine if we can broaden it to include other types of liabilities, whether the fee system can be used to generate more resources, whether the projections that we are presently basing our proposal on are accurate—it can be looked at again.

We had to design a program that could reach enactment, to give us some immediate authority to begin to protect the public health and welfare, rather than a complicated scheme which would be much more questionable of enactment.

I think our concern is that industry, facing the prospect of unending liability on the personal injury side, would so oppose the fee system that it would not become law.

Senator MUSKIE. On one hand, we are talking about that involving health insurance and here we have health problems created by a catastrophe. The catastrophe involving health insurance would impose the burden upon all employers and all employees to the extent they would be asked to contribute through payroll taxes of one kind or another.

Here, you can relate a catastrophe to a specific individual or firm, speaking now about the future, and the abandoned site question is another, but even there, there is liability, so what is the most equitable thing to do, to throw the costs on private individuals, their savings, their economic circumstances or a government program of health insurance, or impose it upon those who profit from this industry.

They produce chemicals that are very profitable. It is not one of the weak economic elements in our society. Where should that burden be borne?

We know if we don't pick it up in the legislation we pass here, we know you can't ignore the cost and it is not going to be wiped out. It is going to continue to exist. Who should bear the cost?

Mr. JORLING. That is a matter of principle, and I cannot disagree. If the committee is inclined to think along those lines, we would be happy to review the evidence that we do have to try to come up with some basis for inclusion of that kind of provision.

Senator MUSKIE. I would appreciate getting the analysis. I put these questions because I think they are the obvious ones and they are also the obvious omissions. I would like at least to have the analysis and the options.

What is the limit of revenues that could be used by the fee method? Would it be 2, 3, 4, 5 cents, a nickel? I find it hard to believe a nickel a barrel is going to be much of a burden to oil companies which raise the price of a gallon of gasoline per month, not per barrel.

Mr. JORLING. We do have models which allow us to examine the economic impact of different fee levels, and we can run that through some alternative schemes and see what comes out.

Senator MUSKIE. I would appreciate that and I will submit some other questions that relate to that for the record.

I have taken the time that my good friend from Vermont could be using probably more profitably than I have used it.

Senator STAFFORD. I am sure I won't do that, Mr. Chairman. I will comment the Senator from Maine has been getting into the very aspect of this bill that has troubled me somewhat.

I would join in the request for further information.

Let me start with this observation and question: There have been two major studies of liability and compensation for pollution victims that this Senator is aware of; one by the Library of Congress and second by an interagency task force.

On page 18 of the Library of Congress report, the authors conclude that litigation under existing State laws seldom, if ever, provide for just and full compensation.

On pages 24 and 25 of the task force report, the authors reached a similar conclusion. They state and I quote:

> If proof of fault is required, as is the case with the negligence theory, payment may be made insurmountable in all but the most clear-cut cases.

Despite the findings, as my good friend, Senator Muskie, pointed out, this bill does nothing to solve this aspect of the problem which may be the single most fundamental issue raised.

Would you care to discuss this matter any further?

Senator JORLING. I agree with both of the conclusions. The burden of proof in establishing cause-effect between a given exposure and an actual measurable health damage is exceedingly difficult.

One of the features of the environment today is that we now have exposure to a multiplicity of chemicals for a long time, and it is difficult to sort out the exposure and the health effect. Whether that can be done, either in this statute or any other, is open to legitimate dispute.

Let me add another personal concern that I have.

Senator CULVER. Doesn't that make it all the more persuasive a case for outright compensation here so you don't place that impossible burden on the claimant?

Mr. JORLING. I think it suggests, if that type of mechanism is desired, no fault.

The concern I have personally is that to the extent we create mechanisms to allow compensation of victims, whether for air pollution exposure, water pollution exposure, or drinking water exposure, we will detract from control. Polluters would quickly shift to a philosophy, "if we are going to pay a fine to help the people's health problems, than there is no need to control our emissions, because the people are going to be taken care of anyway."

Senator STAFFORD. You have already discussed to some degree the Love Canal problem. Let me ask a few hypothetical questions. I suspect in light of your testimony, I know your answers but I would like your answers for the record.

Assume you or I were a resident of Love Canal afflicted with a serious skin disorder which I have reason to believe was haloacne, a disease caused by serious exposure to halogenated hydrocarbons. Would this bill pay my way to see a dermatologist in Cincinnatti who is one of the three persons in the United States capable of diagnosing the problem?

Mr. JORLING. The present proposal would not, but if I were that resident, since I am an innocent victim I might expect the Government to help me.

Senator STAFFORD. If I had to be hospitalized because of kidney and liver problems resulting from my exposure to halogenated hydrocarbons would this bill pay my medical expenses?

Mr. JORLING. It would not.

Senator STAFFORD. If I were crippled by the disease and had to be retrained, would this bill pay for my rehabilitation?

Mr. JORLING. No.

Senator STAFFORD. Assume I own a house at Love Canal with a market value of $35,000. Today, of course, it is worth nothing but I still have a mortgage on the house and have to make payments. I cannot affort a second house but by staying at the canal I expose my wife and children to all of the horrors we have discusssed. Will this bill provide the expenses for moving me out of the neighborhood?

Mr. JORLING. The answer is no. There would be provisions to evacuate the person to avoid temporary exposure but not to relocate.

Senator STAFFORD. Would this bill pay to clean up Love Canal or simply pay for year after year of containment?

Mr. JORLING. It would be limited to containment to prevent the further exposure of the affected people.

Senator STAFFORD. In light of your answers to Senator Muskie, I would assume as to the liability for what has occurred to people at Love Canal and in the other similar situations we have discussed today in the committee with you, they are really left to whatever remedy they can find under the laws and statutes of the States and the common law of the country to sue those who they might be able to prove caused their difficulties, is that correct?

Mr. JORLING. Yes.

Senator STAFFORD. As I read the administration's bill it is not an attempt to provide for relief from all releases but partial relief. I think you have already discussed with us why that course has been taken thus far.

Further provisions of the administration bill can be triggered a substance must be on one or more lists, such as the list of hazardous promulgated under section 311 of the Water Act.

May I ask why you have not included some sort of residual definition of a hazardous substance? It seems apparent to this senator that regulatory list making would almost always lag behind technology so that all too often substances will be added to one of your lists only after they cause harm. For example, it is my understanding that kepone was added to section 311 list only after it was discharged into the James River. Would you care to comment on that?

Mr. JORLING. I think what we have attempted to do is incorporate the rulemaking efforts that have led to chemicals being specifically identified, rather than creating a new rulemaking process which would require another identification process which would go through further judicial challenge.

We have attempted throughout our proposal to incorporate existing activities, existing principles of law, existing rulemaking efforts to the maximum extent we could to avoid what is not the 4-year average time required to implement rules after Congress has given us authority. That is just too long.

Senator STAFFORD. Comparable limitations are imposed on the type of releases that would trigger this bill.

Instead of attempting to deal with the escape of hazardous and toxic substances into the environment generally, regardless of the pathway, the bill seems to have singled out to two special cases: spills into water and releases from abandoned or inactive waste sites. The result of this kind of restriction is that the coverage of

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other types of toxic pollution escapes would be unintentional, if they are covered at all.

For example, it seems unlikely the PBB disaster in Michigan would be covered under this bill even though that chemical has contaminated virtually the entire State requiring the destruction of 30,000 head of cattle and caused untold other harm. Am I correct in assuming that that particular disaster might not be included in the bill now before us and, additionally, that if a human being has been injured by PBB that the present bill would not respond to that injury?

Mr. JORLING. It is our interpretation of our definition of release that it covers any release to the environment—land, water, air, ground water. The PBB pathway you mention was cows eating contaminated feed which was mislabeled. I have forgotten what the PBB's were used for, but they were inadvertently included in feed. It would not be included as a product liability type of provision.

Senator STAFFORD. I have just indicated that your bill would cover discharges of hazardous substances which enter waters. However, that may be a bit inaccurate.

As I understand the bill, it is triggered if a hazardous substance enters ground water which is used as a drinking water supply, thus excluding ground water used to irrigate foods for human consumption. Also, if a hazardous substance enters the water of the United States, but as discharge pursuant to a permit under the Clean Water Act—as opposed to a spill—the bill is not triggered. The history of pollution control in the United States is that regulations lag behind knowledge. For example, for years we failed to realize the implications of discharging metallic mercury in the water. It was only after mercury poisoning became a worldwide problem that we took action here.

Would you care to comment on these situations?

Mr. JORLING. On the first point, it is not our intention to restrict the definition of release to the ground water you described. That is a technical matter that can be repaired.

The other issue I can only basically agree with. The Government is a responding organization. It is not ahead of anything.

Senator STAFFORD. Finally, what studies, if any, has the Environmental Protection Agency or other agency of the Federal Government conducted to determine the nature and extent of damage caused by toxic and hazardous substances in the envoronment? I am concerned with two different types of studies.

First, the work of Dr. Beverly Paigen with the residents of Love Canal is associating toxic chemicals with many more diseases than we previously suspected. She has found elevated rates of diseases which we classically have associated with chemical exposure—such as renal and liver damage—but she has also found elevated levels of epilepsy. What kind of research are you conducting or having conducted on specific disease effects of chemicals and, secondly, what epidemiological work are you doing to determine the seriousness of chemicals in the environment? Is it possible there is a cause-effect relationship between the fact that New Jersey is the center of the petrochemical industry and also the State with the highest male cancer rate?

Mr. JORLING. Senator, I will supply a more complete answer for the record.

The amount of work going on under the Clean Air and Water Acts and RCRA is very extensive, including work at National Cancer Institute and FDA and others.

Incidentially, the corporation in that case has agreed to fund an epidemiological study of the people who drank the well water. The Office of Research and Development enforcement program identified what appear to be elevated cancer rates in various sections of the country. I believe there are five of those areas presently under review. What we do then is conduct an exhaustive survey of every release point of chemicals, basically by overflying.

Then we perform epidemiological studies in that area and assess the cause-effect relationship. These efforts take approximately 5 years to complete. None of them we have initiated in the last 2 years has been completed.

In certain sections of New Jersey and in Louisiana around Lake Charles, where there are elevated cancer rates, we are trying to sort out those factors. I will supply for the record our best estimates of how much is being performed in the way of health studies and other related environmental exposure studies.

Senator STAFFORD. Thank you.

[Mr. Jorling supplied the following information:]

Question. What studies, if any, has the EPA or other agencies of the Federal Government conducted to determine the nature and extent of damage caused by toxic and hazardous substances in the environment? I am concerned with two different types of studies. What kind of research are you conducting or having conducted on specific disease effects of chemicals? What epidemiological work are you doing to determine the seriousness of chemicals in the environment?

Answer. At the present time the Environmental Protection Agency has no funds especially budgeted for the conduct of health research related to hazardous waste problems, nor do we know of any other Federal Agency which has a research program in this area.

The work done by Dr. Beverly Paigen and that done by the New York Department of Public Health on Love Canal are examples of research in the area being conducted by private individuals and the states.

Some of the research on the specific disease effects of chemicals conducted for other EPA programs is applicable to hazardous waste problems. For example, carcinogenic risk assessments which ORD prepared for pollutants of interest to the air and water programs are being used to prepare a document for the Department of Housing and Urban Development in response to HUD's request for guidance regarding Love Canal.

Sometimes epidemiological research designed to provide information to another program office also provides information relevant to hazardous wastes. In the water area we try to make use of accidental exposures to determine the human health effects of certain pollutants which cannot be ethically determined through controlled experimental exposures because their effects are thought to be adverse and irreversible. Such an investigation was conducted in a population in Tennessee where the drinking water had been contaminated with waste from a chemical manufacturer. EPA's investigators were able to document liver dysfunction in the exposed population. the information was pertinent to the needs of the drinking water and hazardous waste programs.

Question. What research is EPA currently performing on the health effects of hazardous waste? What epidemiological research is being carried out?

Answer. To date EPA has not conducted any direct research on the health effects of hazardous waste. In fiscal year 1980 there will be three studies underway, however, which should produce results or information that will contribute to knowledge in this area. First, EPA is researching liver disfunctions in populations ingesting wellwater contaminated with organic residues from dumped pesticides. Second, we are investigating the potential contribution of the land application of sludge on food chain crops to kidney damage and occurrence of cancer. Third, EPA has begun

an internal feasibility study of conducting epidemiology studies at identified problem hazardous waste sites.

Question. Is it possible that there is a cause-effect relationship between the fact that New Jersey is the center of the petrochemical industry and also the state with the highest male cancer rate?

Answer. Scientists have been intrigued for decades with the differences in cancer rates which are found in different sexes, races, occupations, and geographical locations. These differences may be useful clues in determining factors that cause or contribute to the development of cancers. As you suggest, there has been much speculation that the high cancer rates in New Jersey are linked in some way to exposure to petrochemicals. However, that is mere speculation at the present time and not an established fact. It should be noted that the nature of epidemiology is such that it cannot prove cause-effect relationships for many reasons such as the difficulties involved with studying multiroute exposures to complex mixtures and our inability to control for all potential confounding factors. However, epidemiology does provide information on the strengths of associations between cause and environmental factors and can determine how much risk is attributed to each of these factors.

We know that only a small percentage of all the chemicals tested one by one under controlled conditions by NCI are carcinogenic. We also know that real world exposures are far more complex with pollutants interacting to create additive, antagonistic or synergistic effects. For example, when cadmium and zinc are ingested together the effects are not as severe as when cadmium is ingested alone. In the case of asbestos, those who smoke and are exposed to asbestos suffer a hundred times the cancer rate of those who either smoke or are exposed to asbestos, but not both. The exposures in New Jersey are of course far more complex than those examples. To address a situation as complex as New Jersey EPA generally tries to identify constellations of pollutants which appear to be important and investigate them singly or in groups in animal experiments, and conduct population studies in parts of the country where exposures are less complex. In this way we can clearly demonstrate what the effects of certain pollutants are and then apply those results to the situation in New Jersey.

The NCI is engaged in project support in part by EPA, to study the health of populations in New Jersey and relate the findings to environmental or other factors contributing to the increase in cancer. This is an ambitious project which attempts to account for multiple routes of exposure to complex mixtures of chemicals.

Senator CULVER. Thank you very much.

Senator Bentsen.

Senator BENTSEN. Thank you, Mr. Chairman.

We have been working in the Finance Committee trying to treat some of the things this bill tries to prevent from ever occurring. We have been working on the national health insurance bill. That is where Senator Moynihan is, too.

In understanding how this bill works, looking to the first page of the administration fund bill, with this legislation, the Government could act in advance of judicial action to allow the Government of move of any liable parties.

If you spend those funds and you later recover against the party when they are found liable, do those funds go back into this?

Mr. JORLING. They would be coming back into the fund, yes.

Senator BENTSEN. On page 3 of the proposed legislation in the summary it says that it is built upon and would incorporate section 311 of the Clean Water Act to extend the oil spill compensation from just navigable waters to the environment.

I am not sure that is correct. I want to further understand it. I think I probably agree, but I want to understand just what we are talking about here.

Would that broadening include air emissions and, if so, does that establish in the case of an air spill, is that something you would respond to and does the Clean Air Act get into this also, even though that is not specifically stated?

Mr. JORLING. The present authority under section 311 limits this response-recovery liability mechanism to those spills of oils or chemicals which reach navigable waters. That is an artificial distinction.

There are other pathways of exposure that cause public health threats and damage which we think should be addressed, that the public has a right to expect their Government is addressing.

The bill would not amend the Clean Air Act in any way or alter its provisions. Let's take a classic example—a train car derailment where a chlorine tank breaks open. The principal pathway of release from that event—it often contaminates water—is to air.

Recently, we had to evacuate two small communities because of a tankcar. This would give us the moneys necessary to prevent the public from being affected and charge them back to the owner-operator, even though the exposure pathway was air.

Similarly, the contamination was a chemical discharging onto a very permeable sand soil which was above a drinking water well, this would enable us to take the necessary step to prevent the exposure pathway, whereas under the Clean Water Act, we could not.

Senator BENTSEN. I just wanted to establish that for the record so we fully understand what we are doing here and try to eliminate that question.

I am curious as to how you arrive at this procedure on your price. I think I know and I agree with it, but I want to hear the answer. When you decided to tax or put a fee on the chemicals as they are manufactured at the plant rather than on the hazardous wastes themselves as they are disposed of, would you tell me—you have probably answered this—but I would like to know how you arrived at it.

Mr. JORLING. The problems of oil spills, chemical spills, and abandoned sites are very closely interrelated. For instance, people tend to think there is a difference between spills and abandoned sites, but in fact many abandoned sites are releasing oil or chemicals to the environment in ways very similar to a spill. They are very closely related types of situations.

What we wanted to do, was to have resources coming in from those we can draw a nexus to the responsible parties.

Equity was a factor, and efficiency of collection and administrative capability without producing a bureaucracy was considered.

Senator BENTSEN. At least it does not concentrate the economic impact.

Mr. JORLING. In one sense, we have concluded that the efficiency of collection allows the marketplace to distribute down through the production-consuming cycle——

Senator BENTSEN. The consumer always ends up paying for it anyway so the economic impact overall probably remains the same. You don't get a distortion of economic impacts and it seems to me it is a much more efficient and effective way of collecting it than the other approach.

I would assume that was the major part of your reason in arriving at that.

Mr. JORLING. I think it is safe to say we concluded the marketplace would be a better mechanism to distribute the fee through

the consumer process, rather than having the Government trying to identify which consumers should pay if we put a fee at the other end of the system.

That would require a huge bureaucracy and refinements of a nature we don't think it is prudent for the Government to engage in. The marketplace is a superior place for that.

Senator BENTSEN. I seriously doubt the marketplace will make an equitable distribution of that fee based on the hazard of the product. I don't think that would even enter into their reasoning as they try to develop their profit factor.

But I do think it is an easy way to correct it. I think if you went the other route and tried to make the determination, it would be extremely difficult and cumbersome and would need quite a bureaucracy.

But your faith in placing that fee based on being a real hazard to the public, I think that faith is misplaced. I wish I could say otherwise.

Mr. JORLING. This is the first time I have been accused of having more faith in the marketplace than others.

Senator CULVER. As you know, the Senate put $4 million into R. & D. research legislation for more extensive research with regard to health effects in the areas that were being pursued by Senator Stafford.

If that is funded, would you anticipate that it would go to epidemiological studies?

Mr. JORLING. I can't give you a specific answer with respect to that $4 million because that would be expended.

Senator CULVER. That is hazard research?

Mr. JORLING. I don't know what they programed or if they programed, but I will supply an answer for the record.

[Mr. Jorling supplied the following:]

As you know, the Senate put $4 million into research and development research legislation for more extensive research with regard to health effects and so forth, in the areas which were being pursued by Senator Stafford. If that is funded, would you anticipate that it would go to more greater understanding by way of epidemiological studies and so forth?

Yes, I would. While we have an interest in improving our test methods for the determination of whether or not a waste is hazardous so that its proper handling can be determined, there is a great need to document the effects of hazardous wastes on human populations. It is also important to make use of accidental exposures which are, in effect, accidental experiments. We could not in all conscience expose humans to these substances in the laboratory because we believe their effects are adverse and irreversible. Animal experiments are very helpful, but there is no substitute for human data. This problem is particularly well recognized in the area of teratology. Epidemiological studies of populations exposed to hazardous wastes will in this way provide data which is applicable to other exposure situations.

The great concern of exposed communities, particularly with regard to reproductive neurotoxicological effects, means that we cannot ignore the impact of existing facilities on the human populations. We believe that our present picture is incomplete of the numbers of people affected, and the health effects which are typically found around such facilities. There is a need also to determine whether populations around what we believe to be properly operated hazardous facilities suffer from unusually high rates of adverse health effects. If they do, we may need to improve our technology. If they don't, it may become somewhat easier to obtain local cooperation in siting such facilities. Citizens presently offer great resistance to locating hazardous waste facilities in their communities. Yet such facilities are needed if we are ever to properly manage hazardous wastes.

Senator CULVER. I would like to have the information, no matter how sketchy, as to compensation costs to the extent that you can break it out—various fact situations, transportation costs, retraining costs, real estate depreciation, and, of course, the health effects.

I notice you don't give third parties a cause of action in Federal court as opposed to State courts. Is that something you seriously considered, and could you provide us a response for the record on that?

Mr. JORLING. Yes. The Department of Justice has a group studying whether or not a Federal cause of action can be created for these types of actions.

Pending that, we concluded since most of these actions are basically, within their authority that the State judicial systems would be the forum.

Senator CULVER. But will you give us a fuller argumentation or elaboration for the record? I notice that under section 304(d)(2) of the bill, if a person contributed at all by way of gross negligence to his or her loss, then the person doing the dumping is totally excused from liability.

I wonder to what extent this constitutes a loophole and if you could give us some various options to refine our choices. What would be compatible with tort law and other Federal statutes to minimize this potential problem where the dumper could be totally excused from any liability?

Could you provide the legal options for the record.

Mr. JORLING. Yes, sir.

Senator CULVER. Regarding fees, I am concerned that if we use this no-fault concept of feedstock fees, arguably there is not discipline on the manufacturers to minimize potential damage and harm.

Have you given consideration to alternatives such as a sliding scale, flexible fee, a reward incentive, or providing a carrot-stick situation?

I realize it must be enormously difficult to contemplate such flexibility in something as complicated as this. But getting back to what Senator Muskie discussed, what can we do to devise a system that is sensititve to serious good-faith efforts and, conversely, is responsive to errant disregard?

Would you look that over and try to give us something for the record?

Mr. JORLING. We will try, but the difficulty leads me to conclude that is a next generation issue.

The difficulties in establishing who is the cause or which chemical is the cause of a particular harm in the environmental business is exceedingly difficult. The Washington water has carcinogens in it, the air does, almost every food we eat has carcinogens in it. We have to penetrate and sort that pathway mechanism out.

It leads me presently to believe that the best way to protect our people is prevent the release of these chemcials into pathways that can reach our people. I think that is the premise of most of our environmental control laws, and I think it should continue.

It is staggering to envision a system which would measure a fee like this against the risk that is involved in the exposure of people to a particular chemical.

Senator CULVER. Regarding costs, I notice the administration economic analysis says the fee on oil would be 1.5 cents per barrel in 1980.

Mr. JORLING. If we take the assumption of 1978 costs.

Senator CULVER. That is just over one-tenth of 1 percent of the anticipated cost of a barrel of oil. Assuming the administration's decontrol recommendation is accepted by Congress, for petroleum chemical feedstocks, your analysis indicates it would raise feedstocks up to 2 percent and for inorganic materials, six-tenths of a percent.

Your bill provides for a cap on fees. If you could include vital items such as medical expenses which were pursued here today, why not raise the fees to pay for some of these things?

I wonder if you could provide for the record an analysis of how much it might cost to provide for out-of-pocket medical expenses, third-party damages, and the entire 20-year containment cost so we have some ballpark sense of what we are doing here?

In addition, would you show how much the fund and fees would have to be increased to pay in turn for each of these additional items?

Mr. JORLING. We will attempt to do so, but with the caveat that it will be an olympic-size stadium, not a ballpark.

Senator CULVER. It could be helpful if you did it under the administration's proposal to include a Federal appropriation and also with no Federal appropriation.

Mr. JORLING. May I ask for clarification? That is, have the entire fund federally appropriated, or just delete the $1 million Federal?

Senator CULVER. Just deleted.

On that LaBounty situation, I am also not clear here. Is it my understanding that if the leakage is a spill, then some people downstream are compensated? That is, fishermen, for example.

But if it is leaching from an inactive site, which is LaBounty, no one is compensated for damages. What is the rationale for this nice distinction other than politics?

Mr. JORLING. It is not a nice distinction and we admit that. If you look at the classic spill on one end of the spectrum and an abandoned site on the other.

Senator CULVER. Do you mean it is not cute, or nice, or unpleasant?

Mr. JORLING. There are situations where for the purpose of third-party relief under the administration's proposal, which is limited to spills, to make the distinction between a spill and an abandoned site where the same release is occurring is going to be very difficult.

I don't want to understate that. But somewhere along that spectrum, we have drawn a line. I think the only thing I can respond is that case-by-case development is going to lead to a further definition of that line.

It is true if an abandoned site is releasing either oil or a chemical and that that release is causing an effect on a commercial fishery, if it is treated as a spill, that commercial fisherman or person could be compensated to the extent that his livelihood was affected by that release.

If, on the other hand, it was treated strictly as an abandoned site, then that relief would not be available under this provision. It is a gray area that is going to be defined.

Senator CULVER. I think you said earlier in a general statement that "spill" should not be viewed as an all-encompassing term and the distinction between "spill" in the classic sense and "runoff" in interstate waters and "underground leakage" and "leaching" into aquifers are really all one problem, and that the distinction does not make a difference.

Mr. JORLING. It is an inconsistent item in an otherwise comprehensive bill.

Senator CULVER. Do you have any further questions?

Senator MUSKIE. You make no reference to the fiscal year 1980 budget, which was transmitted last week. Would you like to comment on that and on other current activities in which you are engaged at the moment? I know it is in your longer statement.

Mr. JORLING. Thank you, Senator, and I appreciate your giving me the opportunity to describe what the agency has been doing.

In fiscal 1979, the year we are in, we have undertaken to reprogram resources into responding to hazardous waste. We have reprogramed approximately 100 persons, most of them in the regional offices, although we put some in the Edison Lab in Cincinnati that services all of these activities across the country, and we have reprogramed additional dollars for this.

In addition, the President, as part of this initiative and effort, has asked the Congress to amend the 1980 EPA budget which is pending in Congress, to add a total of $20 million for additional resources and effort in the agency in this area, $2 million to help us write the hazardous waste regulations more effectively, $23 million for the 311(k) fund in the interim before this bill or something like it becomes law; and an additional component of 70 officials in the Environmental Protection Agency.

Also, we announced the Department of Justice is receiving $13.3 million for funding efforts in the uncontrolled site area. So, we have substantially redirected portions of what the agency will do during 1980, and much of our effort in 1980 will be in anticipation of the type of resources we hope will be forthcoming from this legislation.

Senator MUSKIE. I have one other question. On the matter of liability, we talked about liability in terms of compensation from the fund. To what extent would you give consideration to creating new causes of action to make more effective recourse to the courts and the judicial system for those injured?

The more effective way of imposing liability is upon those who have created the problem.

Mr. JORLING. It is those efforts the Department of Justice is now studying, whether a new cause of action could be established.

There is another area. We have defined the liability on the part of generators beyond what is now the present state of the statutory law. We have, in effect, adopted the rather ancient common law principle that someone who puts into existence a very hazardous situation cannot insulate himself from the consequences. That law developed mostly in the context of explosives. We have a provision in our proposal to statutorily extend that principle of common law

to generators of chemicals, to hold them liable for the costs of government in containment activity.

Senator CULVER. I have one final question, Mr. Jorling, and that is with regard to and rationale for preempting State action on oil-spills but not hazardous dumps in the administration's bill.

Could you afford us a rationale for that?

Mr. JORLING. Part of the rationale is historical.

Senator CULVER. Are we running into some of these problems in trying to fold in two different bills? In what way have we thought through this?

Mr. JORLING. The comprehensive bill is a much better one. We think a single fund, with a single collection system, except for several eccentricities you mentioned, because the problems are so closely related is very preferable, we have very limited preemption in our bill.

With respect to abandoned sites——

Senator CULVER. Which means you are not permitting the States to slap on another fee.

Mr. JORLING. They could not have a fee on oil or chemicals for the purposes of establishing a Government response program identical to this. If they wanted a fee for purposes of third-party damages, they could do so. If they wanted a fee which was for administrative expenses, equipment, or whatever, if it is outside of this, they could do so.

Part of the rationale for that is the States can have the authority of the Federal Government under this act. They can expend moneys from the fund to respond to oil or chemical spills so, therefore, there is a limited preemption for that.

On the abandoned site side, there is no preemption, partly because the States are required to participate in that response as a condition of the use of funds in this mechanism.

The premption provision is very limited, and it recognizes it goes against the grain of EPA and this committee. It is basically for the purpose of using the nationally efficient collection of a fee as opposed to many collection systems through the States.

Senator CULVER. Thank you very much. We appreciate your testimony and we look forward to your written responses to our questions and we look forward to working with you on this.

The subcommittee stands in recess until further call of the Chair.

[Whereupon, the subcommittee adjourned at 12:05, to reconvene subject to the call of the Chair.]

[Mr. Jorling's prepared statement, responses to written questions, and the bills S. 1341 and S. 1480 follow:]

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STATEMENT OF
THOMAS C. JORLING
ASSISTANT ADMINISTRATOR
WATER AND WASTE MENAGEMENT
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT & PUBLIC WORKS
UNITED STATES SENATE
JUNE 20, 1979

Good morning. I am extremely pleased to be here today to discuss the Administration's legislative proposal to provide a comprehensive system of notification, government response, enforcement and liability, for past hazardous waste disposal practices as well as compensation for oil and hazardous substance spills. Before describing the legislative proposal, I would like to explain why the Administration has developed it. My explanation has two parts -- why the President has called this one of the most significant environmental and public health problems facing our Nation, and second the reasons why existing authorities are inadequate to cope with these problems.

Nature of the Problem

Turning now to releases of hazardous waste from abandoned and inactive disposal sites, we are confronted with perhaps the most serious environmental problem facing the Nation today. Recent months have brought to public attention a series of incidents of improper hazardous waste management. The tragedy at Love Canal has demonstrated all too clearly the unacceptable costs of inferior hazardous waste disposal - not only the staggering financial cost of containing and cleaning up the wastes, but also the pain and suffering borne by the more than two hundred families evacuated from the site. The contamination by chemicals of 54 public wells serving 100,000 of Long Island's residents; the discovery

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of up to 20,000-30,000 barrels of discarded, leaking and unlabeled wastes in the "Valley of the Drums" in Kentucky; the suspected leaching of arsenic and orthonitroaniline into the water supply of 300,000 people in Charles City, Iowa; and scores of other cases in states throughout the Nation are revealing a pattern of current and past improper hazardous waste disposal which is both alarming and dismaying.

Most of the solid wastes, and in particular hazardous wastes, produced in the U.S. in the past have been disposed of using environmentally unsound methods. Given a relative surplus of land, an economic system which failed to incorporate environmental damages into product costs, and ignorance of what was occurring underground at disposal sites, past disposal practices have created a large number of situations in which the environment and public health are gravely threatened. These past practices include poorly designed and poorly sited landfills, industrial waste lagoons with leaking bottoms, uncontrolled incineration, and illicit dumping of waste materials.

In summary, the standard practices were, and still are improper. Landfills can be proper disposal sites. It is possible to retard or prevent the movement of wastes away from the fill using impermeable liners or systems to remove the leachate. However, the overwhelming majority of landfills built in the past have failed to incorporate these features. In areas of the country where some portion of the precipitation moves through the soil and enters the water table, a medium exists to transport hazardous materials underground. A 1977 EPA study of industrial waste landfills indicated that, in 47 of 50 cases studied,

hazardous substances had migrated beyond the boundaries of the disposal area. Approximately one fourth of the incidents of reported damage from improper disposal are groundwater pollution cases of this type. For decades, thousands upon thousands of tons of hazardous chemical-bearing wastes have been deposited in our environment. These sites with their contents of long-lasting chemicals now represent time capsules. These time capsules are releasing, with each passing year, their toxic contents into our surface waters, our groundwaters, and seriously degrading our landscapes, and that most essential element of our life-support system -- our water supply.

One-fourth of the reported damage incidents are due to improperly designed industrial surface impoundments such as lagoons and ponds. These types of facilities as a group represent a large potential danger to public health and the environment because the hazardous wastes which they hold are already in liquid form. As liquids, these materials are more mobile than solids and are more readily transported to the groundwater.

In those areas where precipitation exceeds evaporation (roughly all of the U.S. east of the 100th Meridian, plus the mountain and coastal areas of the west), surface impoundments will eventually either leak or overflow and discharge to surface waters. If the hazardous materials in the lagoons are not being removed, via biological action or filtration, then they are being discharged into the environment. During 1973-75, approximately half of the hazardous waste generated went into unlined surface impoundments - approximately 0.01% went to lined impoundments. After abandonment, surface impoundments frequently contain oily matter or tars or sludges consisting of concentrated hazardous materials.

These may continue to discharge to the surface and subsurface environment long after they have ceased receiving waste materials.

Approximately 15% of hazardous wastes during the period 1973-75 were incinerated, two thirds by uncontrolled incineration. Air pollution problems occur during operation. After closure or abandonment, problems of spills, improper storage, and site contamination caused by wastes that were not incinerated are a common problem. A tragic example of this situation exists today in Elizabeth, New Jersey, where an abandoned waste chemical disposal facility, including an incinerator, exists in a mixed residential/business district. This facility has approximately 45,000 drums of waste oil and chemical wastes, including nitroglycerin, dioxin, etiological agents, phosgene cylinders and 200 drums of PCB contaminated soil.

Illicit dumping, improper storage, or other haphazard land disposal accounts for approximately half of the problem. This would include such practices as dumping of residuals on land, haphazard dumping of drummed or liquid wastes, dumping into sewer systems, or dumping along roadsides. One very common problem at the present time is the operator who accumulates wastes in drums or bulk tankage and then abandons the site. After a period of time the barrels and tanks begin leaking, allowing contamination of surface and ground waters and frequently producing a severe fire or explosion potential. Under the present unregulated system, this practice can provide the operator with sizable profits. The Valley of the Drums and other similar sites in Louisville, Kentucky are examples of this situation.

The effects of the abandoned waste disposal sites are similar to spills of hazardous substances -- contamination of surface and groundwaters including drinking water supplies, fish and wildlife kills, vegetation destruction, threats to public safety because of fires or explosions, and direct exposure of people to hazardous substances as happened at Love Canal. Of 421 tabulated damage incidents, a total of 52 involved "direct contact poisoning."

The number of individuals exposed to hazardous materials through contaminated drinking water may be sizable. In Grey, Maine 750 families drank polluted groundwater for four years. In Hardeman County, Tennessee forty families drank from wells polluted with high levels of extremely toxic chemicals. Illegal disposal of hazardous wastes near Byron, Illinois contaminated wells serving 68 families. This is only a partial listing of the cases in EPA's files.

The types of hazardous waste which are being improperly disposed of include pesticides and highly toxic organic chemicals, other organic chemicals whose toxicity is unknown, inorganics such as heavy metals, and explosives and flammables. These wastes are capable of producing the full range of toxic effects in humans including acute poisoning and such chronic responses as carcinogenicity, mutagenicity, and promotion of miscarriages and birth defects. Personal injuries from fire or explosions are another threat. In addition to these health hazards, social damages such as property loss or devaluation of property and loss of economic livelihood are potential consequences of improper hazardous waste disposal.

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It is extremely difficult to estimate the full extent of the problem. Varying amounts of information have been accumulated by EPA on approximately 700 damage incidents. Many hundreds more are suspected but undocumented. Cleanup has been attempted in only a fraction of the reported cases and some remedial action may be necessary in a majority of the cases. Since there is little or no incentive, and considerable disincentive, for a site owner or operator to publicize his environmental problems, these reported damage incidents probably represent only a fraction of the problem sites.

A recently completed EPA study, done under contract and based on very rough data, has attempted to estimate the size of the hazardous waste disposal site problem. The results are expressed as a range of total sites and sites with potentially significant problems. The study estimates a range of about 30,000-50,000 sites containing hazardous wastes, of which about 1200-2000 may present potentially significant problems. I want to re-emphasize that these figures are very rough and should only be used as "ballpark" estimates.

This study also attempted to estimate order of magnitude costs associated with remedying the situation at sites with potentially significant problems. Costs were estimated at two different levels of remedy. The first level estimated costs for measures taken on an emergency basis to contain the wastes to prevent existing problems from becoming worse. The second level reflected costs that would be associated with an ultimate remedy which generally assumed excavating wastes and contaminated soil and disposing of them off-site at safe hazardous waste disposal facilities. Cost estimates for both levels

of remedy were made from data on over two hundred sites. An average cost per site for each level was derived taking into account size and type of facility. Based on the available data the average cost for the first level of remedy was estimated at $3.6 million per site. The second level average was estimated at $25.9 million per site.

Excluding cases for radioactive wastes and cases judged to have no costs, the range of costs for containing the wastes nationwide (based upon 1200-2000 problem sites) is estimated at $3.6 - 6.1 billion. For off-site treatment and disposal, the nationwide range is estimated at $26.2 - 44.1 billion. These estimates do not include compensation for property damage, direct or consequential economic losses, or personal injury. While these are the best estimates available at this time, they are very rough estimates.

Turning now to spills of oil and hazardous substances, we are confronted with a problem which is better understood. Some of the effects of oil spills are obvious -- covered beaches, rivers dotted with oil slicks, trees and bushes coated with oil, dead birds and fish. Marine birds die as a direct result of oil spills because oil can destroy the natural insulating qualities of their feathers and because ingested oil interferes with natural body processes. Fish and shellfish are killed, stressed, or made unfit for human consumption by an oily taste. Damage fishing grounds also mean financial losses for fisherman and seafood processors.

The effects of oil spills, however, are not confined to the immediate or the obvious. Oil spills may also involve subtle changes which over a long period of time could alter the composition of aquatic

communities or damage the abilities of individual species to survive. Oil can interfere with vital ecosystem processes and introduce subtle changes in the behavior patterns of aquatic organisms. For example, fish can lose their ability to secure food, avoid injury, escape from enemies, recognize territory, migrate, communicate, and reproduce. There is also considerable evidence that large oil spills during rough seas can cause huge quantities of oil to precipitate to the ocean floor where it becomes bound up with sediments and smothers the marine life. This can fundamentally disturb the food chain and may well be the most significant long-term affect of France's Amoco Cadiz spill.

During the past five years there has been an average of about 11,000 oil spills per year in the United States. This total includes spills from all sources such as vessels, railroads, tank trucks, refineries, storage facilities, onshore and offshore oil drilling operations, and pipelines. The average volume of oil spilled during this time period was 17 million gallons per year.

Estimated annual Federal costs for oil pollution removal are $9 million. This cleanup cost estimate reflects the annual costs of cleanup expended from the Clean Water Act Section 311(k) fund. The $9 million annual figure does not reflect the amount spent by private persons and non-Federal agencies. Moreover, it could not be expected to represent total annual cleanup costs in a year in which a spill or spills of catastrophic proportions occurred. For example, in 1976 the oil barge NEPCO 140 grounded in the St Lawrence Seaway, spilling approximately 500,000 gallons of heavy numberr six fuel oil. Clealup costs for this incident alone were $8.5 million. Outstanding claims for damages are $17.5 million. Also in

1976, the Argo Merchant grounded off Nantucket spilling 7.5 million gallons of oil. Cleanup costs for this spill were $2.8 million. Outstanding damage claims are $60 million.

Spills of hazardous substances can have serious environmental and public health impacts similar to abandoned hazardous waste disposal sites. Environmental damage resulting from such spills can result in massive fish kills, destruction of wildlife, air pollution, and loss of livestock by contamination of drinking water. Spills have also resulted in loss of life and posed direct threats to human health from toxicity, fires, and explosions. Most frequently, spills have caused the temporary contamination of wells. On several occasions, accidents involving freight carriers have resulted in the sudden or potential release of pollutants, requiring evacuation of populated areas.

Concern with hazardous substances discharges is not limited to transportation accidents but also includes spills originating from processing, manufacturing, storage, consumption and disposal activities. Each year new commercial chemicals are developed and millions of tons of hazardous substances which could cause a serious pollution problem are manufactured and entered into commerce. The growth rate of the chemical industry is on the order of six percent per year, and that of the transportation industry is of equal magnitude. Transportation spills data developed by a contractor in 1970 for the Council on Environmental Quality, predicts that 2000 tank truck spills, 1000 railroad spills and 500 barge or tanker spills could be occurring each year by 1980.

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Sources of hazardous substance spills include both transportation and nontransportation facilities, such as vessels, tank trucks, rail cars, storage tanks, pipelines, holding lagoons and chemical manufacturing and processing plants. The number of spills resulting from fixed facilities and the various transportation modes is not available since mandatory reporting of such incidents, as required by Section 311 of the Clean Water Act, is not yet in effect. EPA expects to promulgate the regulations for spills of hazardous substances in mid-July. Numerous independent data sources exist which may be used to characterize the occurrence of hazardous chemical spills. However, these sources are of limited value since some only address particular types of spill sources, while others combine statistics for oil and related material spills with those for hazardous substances spills.

An analysis of the various reporting systems indicates that there are about 3,500 incidents per year involving chemicals spilled from sources which have the potential of releasing significant quantities of hazardous substances either onto land or into water. Of these, it is estimated that about 50 percent or 1,700 spills would reach navigable water; the remainder of the spills are into groundwater, the air or onto land. The Agency also estimates that the 299 hazardous substances designated in accordance with the requirements of Section 311, there are about 700 to 1,200 significant spills per year into navigable waters.

In the absence of mandatory reporting and an operational hazardous substances program, there are no reliable national data available on the removal, treatment, disposal and restoration costs for hazardous substances incidents. A 1978 report, prepared by A.D. Little, on the "Estimation of the Frequency and Costs Associated with the Cleanup of Hazardous Materials Spills", states that the most probable annual cost for Federal cleanup of chemicals is $13.0 million. Cleanup costs may range from $6.5 million to $26.1 million per year.

In the Agency's judgment, the estimated annual cost figure in the A.D. Little report appears to be too low. First, the assumption of 90 percent industry participation was made in the absence of an operational National Hazardous Substances Program which would subject a discharger to notification, cleanup liability and penalties. A slight decrease in industry participation could easily result in a two to three fold increase in the annual cost for Federal cleanup of chemicals. Second, the annual cost figure above did not include: administrative costs, long-term environmental restoration, third party damages, evacuation and public safety costs, some deliberate dumps of hazardous chemicals, and especially leaching from abandoned disposal sites. Third, the projected costs excluded spills of less than 100 gallons. It is generally accepted that hazardous substance spills in the most toxic category, such as pesticides, can cause severe environmental emergencies in less than 100 gallon quantities.

Inadequacy of Present Authorities

What legislative authorities do we presently have and how effective are they in solving the hazardous waste and materials problem? With regard

to hazardous waste management, I have pointed out the nature of the problem of current or past incidents of improper disposal, especially those related to abandoned and inactive sites. Unfortunately, the magnitude of this problem was not well perceived by EPA or the Congress at the time that the Resource Conservation and Recovery Act, or RCRA, was enacted. As a result, RCRA is not well suited to remedying the effects of past disposal practices which are unsound -- it is focused instead on the equally critical problem of preventing more problems by controlling present and future hazardous waste disposal.

RCRA does provide authority to deal with imminent and substantial hazards under Section 7003. Section 7003 authorizes EPA to bring suit in district courts to enjoin an owner or other responsible party of an active or inactive site to take remedial action to prevent or abate an imminent and substantial danger to human health or the environment. We can only exercise this authority where the owner or responsible party is identifiable and financially and otherwise able to remedy it. Even where these conditions obtain, the "imminent and substantial" test can often be a difficult legal burden to carry. In addition, any remedial efforts can only begin after successful judicial action which can take a long time -- sometimes years -- in fact, to date we have been unable to bring even one such action to a successful conclusion.

In addition, if the perpetrator is unknown; if the perpetrator cannot be located, cannot afford cleanup, or declares bankruptcy and walks away from the site; or if the responsible company was dissolved long ago, Section 7003 is not an effective tool.

With regard to spills of hazardous substances and oil, Section 311 of the Clean Water Act establishes a control program for certain of these incidents. For spills into navigable waters, Section 311 provides for reporting of discharges, establishment of penalties, and liability limits, clean up and mitigation by the Federal Government, and a revolving fund to pay for the clean up and mitigation. There are, however, limitations to the use of Section 311. First, Section 311 is limited to a spill or substantial threat of such spill into navigable waters. Thus, spills which threaten or contaminate, for example, soil or air, but not surface water, are not addressed by Section 311. This jurisdictional limitation prohibits the application of Section 311 to most hazardous waste disposal sites and all spills into other than navigable waters. Second, Section 311 is only applicable to designated hazardous substances. A discharge of a substance not designated under Section 311, or which cannot be identified because it is part of comingled wastes, would not be covered by the section's revolving fund.

A second limitation relates to the size and nature of the 311(k) fund. The 311(k) fund was established at $35 million and currently has approximately $5 million. It was appropriated originally and is maintained by any recovered costs and additional 311 appropriations. As I described earlier, estimated costs for emergency assistance and containment of hazardous waste problems at inactive and abandoned sites range from $3.6- 6.1 billion. Even if the fund were somehow applicable to the bulk of hazardous waste disposal sites, the size limitation on the 311 fund would preclude its use in most cases.

The emergency powers provision of Section 504 of the Clean Water Act is another relevant authority for addressing hazardous substances and waste. Although it does not have the jurisdictional problems associated with Section 311, Section 504 is authorized at only $10 million, which is inadequate for even some individual abandoned sites. Furthermore, Section 504 has limited cost recovery provisions. It must rely largely on appropriations. The Administration has not requested funds, and the Congress has not funded this section. None of the current authorities require that the Government be notified of the existence of abandoned or inactive sites.

In summary, there are existing provisions of statutes administered by EPA which apply to parts of both the hazardous waste and hazardous substances and oil spill problems. Taken together, however, these provisions are inadequate to solve the environmental and social problems caused by improper hazardous substances and waste management. I want to emphasize that until such time as Congress passes legislation granting additional authority, EPA will take maximum advantage of existing authorities to respond to improper hazardous waste disposal problems and spills of oil and hazardous substances. I will describe these activities later.

Summary of Legislative Proposal

The past abuses I have described represent threats against which our people expect action. The bill submitted by the President is designed to provide that action. It does this by building upon existing statutory authority and programs.

The proposed legislation addresses releases to the environment of oil, hazardous substances and hazardous wastes from spills and from inactive and abandoned disposal sites. It establishes a comprehensive and uniform system of notification, emergency government response, enforcement, and liability for such incidents as well as third party compensation for spills by:

(1) requiring notification to government of spills and the presence of inactive and abandoned hazardous waste disposal sites;

(2) empowering government to clean up and mitigate the pollution without delay in incidents where the liable parties do not respond adequately or cannot be quickly identified;

(3) enforcing higher standards of care by providing for recovery of government costs of response and third party compensation from liable parties, as well as penalties; and

(4) providing for quickly compensating innocent victims of spills for damages to property and the loss of opportunity to harvest marine life.

Upon learning of a spill or a release of wastes from an abandoned or inactive disposal site, the legislation would enable the government, in advance of judicial action, to induce liable parties to prevent or clean up and mitigate the problem by authorizing the government, if necessary, to act in their place without delay and later recover the public costs. Even where a responsible, economically viable party could not be identified, government response could still be taken without delay to protect public health, safety or a significant environmental

resource. The legislation would also provide for compensation to innocent victims of spills for damages to property or lost opportunity to harvest marine life, in advance of judicial action. Additionally, for spills, any third party damages paid as a result of an inadequate response by the potentially liable parties could also be recovered by the government.

I want to point out that although the proposed legislation does provide limited third party damages for spills, no third party damages are provided for uncontrolled hazardous waste disposal sites. The reason for this is that the amount of funds which can be raised and made available for inactive and abandoned sites is limited and the projected costs of cleaning up these sites is enormous. The costs associated with third party damage claims at these sites could be huge. For example, indications that third party claims at Love Canal may surpass the $2 billion figure. Given limited funds, the Administration believes that first priority must go to prevent exposure of people to toxic chemicals at hundreds of sites as opposed to compensating damaged third parties at a far fewer number of sites.

The proposed legislation is built upon Section 311 of the "Clean Water Act" and the proposed "Comprehensive Oil Pollution Liability and Compensation Act" developed by the Department of Transportation (DOT) for the 96th Congress. With minor conforming amendments the proposed legislation extends the DOT draft bill for oil spill compensation from just "navigable waters" to the "environment," and includes spills of designated hazardous substances. This proposed legislation also incorporates the notification, emergency response,

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penalty and spill prevention provisions of Section 311 and ensures the carry-over of Section 311 regulations, case law and government response capability. In effect, the legislation converts the Section 311(k) fund from an appropriated fund to an expanded fee-based fund and adds a compensation system for third party damages to property and lost opportunity to harvest marine life from spills of oil and hazardous substances.

The draft legislation also uses Section 311 and the DOT bill as a basis for addressing inactive and abandoned waste disposal sites. The proposed legislation adapts the Section 311 notification, emergency response and liability program to releases or threatened releases to the environment of hazardous wastes from inactive and abandoned disposal sites.

Finally, the proposed legislation expands the basis for collecting fees in the DOT-proposed fund to cover also hazardous substances and hazardous wastes and adds an annual Federal appropriation to the fund.

Coverage. The proposed legislation would cover releases into all environmental media, including navigable waters, groundwaters, land and air. The covered materials would include oil, all hazardous substances designated under Section 311 of the Clean Water Act and under the same provision as incorporated in the proposed legislation, and wastes defined as hazardous under Section 3001 of RCRA. The legislation would cover spills and abandoned and inactive hazardous waste disposal sites, but not discharges or sites with permits (or in the case of RCRA, "interim status") under existing

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Federal environmental protection laws. In addition, the legislation would authorize use of the fund and recovery of costs for incidents involving releases to the environment posing an imminent and substantial danger to public health or welfare, regardless of any of the above limitations on materials or sources.

Size of the Fund. The proposed legislation would authorize the fund to raise $1.625 billion from appropriations and fees over a four year period; authority for additional fees and appropriations would cease upon reaching this limit, unless Congress reauthorized a financing mechanism. The sources of revenue for the fund include: (a) per unit fees on petroleum oil, petrochemical feedstocks for organic chemicals, and certain other inorganic chemicals and heavy metals up to a total of $400 million per year; (b) Federal appropriations of up to $100 million per year; (c) recovered costs of government response; (d) amounts recovered by the fund as the subrogee of compensated victims; (e) onetime transfer of funds authorized by four superseded Federal statutes; (f) penalties; and (g) interest earned on a capital reserve of up to $50 million. If expenditures in any year exceed the fund's assets, the fund could draw on the $50 million capital reserve and repay with fund revenues collected in future years.

The legislation provides for a phased initiation of the fund: first full year 50 percent ($250 million) of $500 million; second year 75 percent ($375 million) of $500 million; and the third and fourth years, $500 million.

The legislation provides for midterm adjustment. Within three of passage the President would submit a report to Congress which describes experience, to date, in implementing the legislation, the

extent of the inactive and abandoned sites problem projected to remain after expenditure of the initial $1.625 billion; projected funds required for spill response; extent of State participation; and recommendations for statutory modification in such areas as fee structure, operation of the fund, liability limits, and financial responsibility limits. The report would include a recommendation on the projected need for re-authorization.

Basic of the Fee. The fee system attempts to balance two principles which often conflict (a) administrative simplicity and (b) equity. The proposed system of fees covers petroleum oil, petrochemical feedstocks, and certain highly toxic and/or high volume or frequently spilled inorganic elements and compounds including heavy metals, halogens, acids, and bases.

This fee is based upon the belief that the fee should come as broadly as possible from those segments of industry and consumers who are most responsible for imposing the risks in society. All petroleum oil and almost all hazardous substances are products of the oil industry, chemical and allied industries, and heavy metals industries. In addition, most hazardous wastes are produced from these industries. All organic chemicals are derived from petrochemical feedstocks. Certain heavy metals, halogens, acids, and bases are significant elements and compounds for many toxic inorganics. Because the fees will be raised from all competitors in an industry, it is expected that costs will ultimately be passed on to users and consumers who have benefited from these commodities.

To cover incidents where oil, hazardous substances, and hazardous wastes are released, the legislation establishes authority to collect up to $400 million annually through the following fees:

(a) A total of $100 million per year raised by a fee, not to exceed three cents per barrel on crude or unfinished petroleum oil received, from refineries for domestically produced and refined petroleum oil and from the owners of imported and exported petroleum oil.

(b) A total of $200 million per year raised by a fee, not to exceed onehalf cent per pound of petrochemical feedstock supplied to others for production or manufacture of organic chemicals or used by the supplier to produced organic chemicals. The petrochemical feedstocks inclu·· ethylene, propylene, butylenes, butadiene, butanes, benzene, toluene, xylenes, naphthalene, carbon black, and methane, other than that used to make ammonia.

(c) A total of $100 million per year raised by a fee, not to exceed two dollars per ton paid by suppliers (including self-suppliers) on certain inorganic elements and compounds, including but not limited to certain heavy metals, halogens, acids and bases. The fees from all sources would be collected from fewer than 988 companies. The exact number will be less because a number of companies produce several of the materials subject to the fee.

Within the above total limits for each category of fees per year, the legislation authorizes the Executive Branch to modify the fees by regulation on an annual basis to more nearly reflect the claims and payments experience of the fund. In addition, within three years, the Executive Branch is required to recommend any statutory modifications

in the maximum annual level of fees collected upon petroleum oil, petrochemical feedstocks, and inorganic elements and compounds, to more nearly reflect the operating experience of the fund.

The legislation establishes several safeguards to minimize inequities and any unintended adverse impacts of the fee system. Once a fee has been levied on a given quantity, no further fees may be imposed on that quantity. Oil which is refined and then used as an organic feedstock is the only exception to this principle. The legislation limits the fee to two percent of the market price of any crude petroleum oil, petrochemical feedstock or inorganic element or compound against which the fee is charged. This safeguard, together with the relatively small size of the fund, ensures that economic dislocations or shifts in feedstock or resource use will not result from the fee system. As an economic incentive for recycling and energy conservation, the fee may be reduced through a credit for recycling and reuse of materials subject to the fee.

The proposed $400 million fee system is expected to have a negligible impact on the U.S. economy. The size of the fund is small both in relation to the overall economy and in relation to the industries paying the fee. The fee on crude oil will amount to a very small percentage of crude oil prices. The fee on crude oil in 1980 would be approximately 1.85 cents per barrel or 0.11 percent of expected 1980 crude oil prices of $16.83 per barrel. At the gas pump, this would be less than 7/100ths of one cent in increased prices. The effect of the fee system on inorganic chemicals is expected to

result in price increases of less than one percent. The effect of the fee system on the organic chemical industry will be to increase petrochemical feedstock prices by less than 2.0 percent and final organic chemical product prices by an average of 0.6 percent. This may have a slightly dampening effect upon the rate of growth of sales in the chemical industry, but like the crude oil price increases, would not result in any production shifts, employment losses or plant closings. The changes in chemical prices will not be great enough to produce any changes in the process economics of the petrochemicals industry sufficient to creat shifts in feedstock or resource use. In the first two years, the effect of the fee system will actually be less than the projections above as the fees are phased-in and the fund grows from $250 million to $500 million. In later years the effect of the fee system is likely to be even less than projected as general price increases make each fee a smaller part of production costs.

Uses of the Fund. For spills of oil and hazardous substances or substantial threat of spills, the fund may be used to compensate government for its response costs. These costs of Federal or State response include: cleanup or removal; such other actions necessary to prevent, minimize, or mitigate damage to public health or safety, or the environment; and restoration of natural resources or acquisition of equivalent resources. Government response is authorized where the government determines that the responsible party will not adequately respond. The fund will also compensate innocent victims of spills of oil and hazardous substances for real or personal

property damages or the loss of opportunity to harvest marine life. In general, claims for third party damages are presented directly to the spiller or other liable party and only if they deny all liability or no settlement occurs within 120 days, whichever occurs first, may the claim be submitted to the fund.

For releases, or substantial threats of releases, of hazardous wastes (which includes waste oils) from waste disposal sites, the fund may be used to compensate government for its response costs to prevent, minimize or mitigate substantial danger to public health or safety, or to a significant environmental resource. Like spills, government response is authorized where the government determines that the responsible party will not adequately respond or where there is no known responsible party. The Federal government may respond by providing or arranging for the provision of up to $300,000 in emergency assistance (i.e., those actions needed immediately), such as temporary alternative drinking water supplies or temporary evacuation, removal of explosive or highly toxic hazardous wastes from the site, and on-site actions to prevent, minimize or mitigate the danger quickly. Emergency assistance may also include all investigations and planning necessary to determine how to contain and/or remedy further contamination. Emergency assistance may result in enforcement, under other environmental authorities where a liable party is discovered but refuses to remedy the situation, or further government response, or both.

As further government response, the fund may provide and operate for one year the least cost method of containing the hazardous wastes over 20 years or consistent with eventual permanent remedy (if different from containment). Containment includes on-site actions to prevent or minimize the continued release of hazardous wastes so they will not migrate to cause substantial danger to public health or safety or to significant environmental resources, as well as monitoring necessary to assure the success of the containment. Containment does not include off-site treatment and disposal unless this is the least cost means of containing the wastes, or unless other parties pay any additional costs needed for off-site treatment and disposal. Examples of containment include clay cover, neutralization, perimeter protection using dikes or trenches, collection and treatment of leachate and runoff, replacement of breached containers and on-site treatment and redisposal onsite.

In addition to these uses of the fund, government costs incurred when responding to an imminent and substantial danger to public health or welfare would be recoverable from the fund.

Preemption and the Role of the States. The legislation focuses Federal assistance on those sites presenting the most serious public health, safety or enviornmental problems: the States would have the responsibility for remedying the problems caused by the vast majority

of the remaining inactive and abandoned sites. The proposed legislation would not preempt in any way the States' authority with respect to sites to establish funds, set limits of liability, pay for personal injuries or other third party damages, or impose a fee or otherwise raise revenues to support such funds.

The fund created by the proposed legislation would enable the Federal government to use up to $300,000 for emergency assistance at abandoned and inactive waste sites, regardless of State involvement. Provision of all costs of containment at these sites, however, would be contingent upon several conditions. First, in all instances, the State would have to agree by contract to assure any necessary continued maintenance of the containment, including the costs of such maintenance, beginning one year after containment is first achieved and extending for up to 19 years or the life of the containment, whichever is less. The State may either perform this function itself, contract it out, or bind responsible parties and their successors to perform this responsibility. Second, the State must also assure in the contract that if off-site disposal capacity is necessary for containment, this capacity will be provided. If the cost of initially achieving containment would exceed $200,000, the State must also pay 10 percent of the costs of achieving containment and maintaining it the first year. If the site is owned by a State or local government, the State or local share of achieving containment would be 50 percent.

If a State decided to implement other than the least cost containment, the State would have to pay the difference between its alternative and the least cost alternative. Provision is also made for the fund to cost share in a centralized treatment and disposal facility for several sites in an area.

The above preconditions on use of the fund for containment provide the basis for State and local governments to assist in defining priorities for government response among abandoned and inactive sites. The proposed legislation would require the Administrator of EPA to establish by regulation a priority system based on criteria specified in the statute and including the roles of State, local, and Federal governments in assisting the Administrator in his determination of priorities. The proposed legislation prohibits use of the fund for a given site unless the Administrator determines that the abandoned or inactive hazardous waste disposal site is eligible under the priority system.

The legislation would also require revision of the National Contingency Plan to establish a contracting system for allowing States to provide emergency assistance and containment for abandoned or inactive sites and to be fully reimbursed by the fund. The States could contract with the fund to carry out any Federal government response authorized by the legislation.

With respect to spills, the proposed legislation preempts States from establishing funds, liability schemes or financial responsibility requirements which would duplicate the purposes of the legislation but it does not preempt States for other purposes. Thus, States could compel payment of a tax or fee to establish a fund to pay for personal injuries of innocent victims or purchase of pollution abatement equipment.

Liability. Owners and operators of vessels or facilities which are the source of or pose a threat of pollution by spill are subject to joint, several and strict liability for all costs and damages covered by the fund. Owners, lessees and operators of inactive or abandoned hazardous waste disposal sites are subject to joint, several and strict liability for costs of government response covered by the fund if they caused or contributed to a release of hazardous wastes. In addition, the corporate veil is pierced since any other persons who caused or contributed to the releases at such disposal sites, including but not limited to prior owners, lessees, and generators or disposers could be similarly liable. This definition of liability recognizes that in some cases, persons other than current owners or operators have contributed to, and therefore are responsible for damages caused by releases from sites.

The legislation establishes limits to liability under certain circumstances. In the case of a vessel other than a ship or an inland oil barge, the limit of liability would be $150 per gross registered ton or $250,000, whichever is greater. For inland oil barges the liability limit would be $150,000 or $150 per gross registered ton, whichever is greater. In the case of a ship,

the liability limits would be $250,000 or $300 per gross registered ton (up to a maximum of $30,000,000), whichever is greater. For offshore facilities operated under authority of the Outer Continental Shelf Lands Act, the limit would be the total of removal costs plus $50,000,000. In the case of abandoned and inactive hazardous waste disposal sites o onshore facilities or offshore facilities (not under the OCS Lands Act), the liability limit may be established at $50,000,000 or a lower limit, but not less than $8,000,000. The limits to liability do not apply when there has been willful misconduct, gross negligence, violation of relevant Federal regulations, failure to provide notice of a release, or failure to cooperate or assist in cleanup operations requested by responsible federal officials.

The legislation establishes limited defenses to liability. Defenses include (a) incidents caused solely by an act of war or of God, (b) as to a particular claimant, that the claimant's gross negligence or willful misconduct contributed to the economic loss.

The fund itself is liable for damages from spills and subject to similar defenses. The fund is liable for damages from releases at abandoned or inactive hazardous waste disposal sites, but this is limited to the costs of government response and applies only where the site has been certified as meeting the criteria for priority established by the Administrator of EPA. Thus the fund provides compensation in those instances where claims, including those of Federal and State governments, are not fully satisfied by payment from a responsible party, or where the responsible party cannot be identified or is not liable under the Act.

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Immediate Actions Under Existing Authorities

The legislative proposal represents President Carter's personal commitment to create an equitable and effective mechanism to protect public health and welfare. The process of developing this legislation has been very thorough, and the legislation has received intensive and high level scrutiny throughout the Executive Branch. We believe it will establish an effective program to deal with this serious problem. However, it is not yet law and, therefore, the Administration is taking what immediate actions we can under existing authorities:

- We have made hazardous waste a first priority and made investigations and actions against hazardous waste sites presenting imminent hazards our top enforcement priority.
- We are establishing a National Hazardous Waste Enforcement Task Force and a National Hazardous Waste Site Investigation and Response Unit at EPA Headquarters, with counterpart efforts at our Regional Offices, to address the three tasks of (1) discovery and investigation, (2) enforcement, and (3) emergency government response. These efforts will be coordinated by the Administrator and Deputy Administrator.
- We have diverted employees from other duties and now have about 100 EPA people working on site investigations and enforcement. We held a workshop two months ago in

Denver on hazardous waste investigations and case development. This was attended by more than 100 EPA and Justice Department personnel.

- We now have a list of about 50 sites which have been or are now being investigated as actual or potential imminent hazards.
- We have 44 site investigations underway with a view to possible civil actions to require containment and clean up of the hazards by responsible parties.
- Working with the Department of Justice, we have begun seven civil or criminal actions against parties responsible for imminent hazards, and will file more cases in the near future. Cases to date involve criminal and civil actions.
- We are recruiting a special investigations unit of "law enforcement-trained specialists" which will begin work as soon as they are on board.
- We have taken emergency response actions under Section 311 of the Clean Water Act. Near Louisville, Kentucky, for example, EPA
  - o secured and disposed of 800 barrels of chemicals in and around the flood waters of Stump Gap Creek at a cost of $100,000
  - o discovered additional sites at the Brickyard containing 3,000- 7,000 barrels and the Valley of the Drums containing 20-30,000 barrels, and

- o took emergency action over a period of 20 days at the Valley of the Drums to abate the runoff of oil and hazardous chemicals and treat contaminated waters at a cost of $290,000

- We have worked with and supported the States. States have been encouraged to use hazardous waste grant funds to identify abandoned and problem sites; New York has located over 400 sites containing hazardous waste in its northern counties alone. We have also provided technical, laboratory, legal, and emergency response support to State investigations and actions such as New Jersey's effort against the Chemical Control disposal site in Elizabeth, where highly dangerous chemicals have been abandoned in a business/residential area.

In order to undertake all possible efforts within existing law, the President is also asking Congress for an addition to the FY 1980 budget of $22 million and 70 positions for EPA, $23 million to replenish the 311(k) fund, and $1.2 million and 30 positions for the Department of Justice. This will help us to immediately intensify our efforts in enforcement and emergency government response at the abandoned and inactive hazardous waste disposal sites.

The most critical issue, though, is the need for new legislation. President Carter's proposal has been transmitted to Congress and I applaud the prompt consideration it is being given by this Committee. I hope that the legislation will be speedily enacted. In a matter so critical to the public health and to the environment, we cannot afford delay.

Question: Why doesn't the Administration proposal deal with personal injury damages for uncontrolled sites?

Answer: The interagency discussions on the superfund proposal included significant examination of the issue of personal injury compensation. The decision not to cover personal injury damages from uncontrolled sites was a difficult one, but one whish is critical to the ultimate purpose of the proposal--to maximize public health protection given limited funds through cleaning up dump sites. In the Administration's opinion, this is best achieved through a preventive public health approach which focuses on emergency assistance and containment. This response will prevent more people from being exposed to toxic wastes as happened at Love Canal.

By way of illustrating the trade-off between emergency assistance and containment costs on the one hand, and personal injury compensation on the other, consider the Love Canal example. According to a recent Congressional Research Service study, residents of the Love Canal area have filed $3 billion in claims, at least $1 billion of which are health (i.e. personal injury) claims. The Fred C. Hart report, commissioned by EPA, estimates emergency assistance and containment costs at uncontrolled sites to be an average of $3.6 million per site. Assuming these figures to be reasonably representative, the same $1 billion needed for personal injury compensation at Love Canal could instead be used for emergency assistance and containment at approximately 275 other sites. Even if only one-quarter of these claims were eventually substantiated and paid, prevention of further damages at 70 sites would have to be foregone by compensating victims at just this one site. Use of available funds for emergency assistance and containment could prevent personal injuries from happening to hundreds of thousands or even millions of people. Since superfund (or any other reasonable mechanism) can raise only so much money and the potential costs of cleanup are so huge, this type of tradeoff is quite real and necessary. Therefore, without disparaging the suffering of people at Love Canal, the Administration has determined that the best use of limited available funds would be to prevent similar injury from occurring to hundreds of times that many people.

Moreover, it is the Administration's position that any decision regarding compensation for personal injury should be made in the context of government-wide policy on health care and not in the superfund context. The President has recently proposed a national health care plan that would include protection for catastrophic costs, both acute and chronic. Under the Administration's health plan, no family will be required to pay more than $2,500 for medical expenses in a single year. No one will

be denied coverage because he or she is labelled a "bad medical risk." In addition, the elderly will have unlimited hospital coverage and will be required to pay no more than $1,250 for medical expenses in a single year. The proposed National Health Plan will extend comprehensive coverage for physicians, hospital and related services to low income groups as defined in the proposal. The Administration's proposed National Health plan, coupled with existing public and private health insurance which covers approximately 90 percent of the population permits, in our opinion, the use of superfund resources to address the most pressing preventive health problem--the cleanup of hazardous spills and abandoned chemical dumps. We firmly believe that the need for additional coverage, if any, should be addressed in the context of national health insurance rather than in the context of superfund. In this manner both acute and chronic medical costs can be covered without the necessity of justifying whether a cancer or mutagenic effect manifested 20 years after exposure to a dump site was caused by that incident or by other environmental exposure.

Finally, States are not prevented from expanding their existing health care coverage or beginning new programs where they feel an unmet need exists. The States can finance such programs from taxes or fees. The Administration's superfund proposal permits the States to exercise their existing authority and to change State tort law to provide individuals with improved access to the courts in order to obtain redress associated with hazardous substance incidents. We believe that changes to existing state programs or tort law are more appropriate solutions than an overriding Federal act supplanting state law in this area.

Question: What options exist, other than changing the fee structure, for inducing higher standards of care in the hazardous substances and wastes area, especially through prevention and deterence?

Answer: It should be noted that with regard to uncontrolled sites, the goal of achieving higher standards of care is not relevant because it is already too late; emergency assistance and containment are required. However, there are two options which could improve prevention and deterence of other hazardous problems.

- Under the uncontrolled sites portion of the Administration bill, liability for hazardous wastes at sites includes the generators of such wastes. A similar liability provision could be built into the hazardous substances spill portion of the proposal. By making producers, as well as the party which spills, liable for damages from a spill, an additional party--the producers--would have a strong incentive to improve standards of care throughout the chain of commerce.

- Extending the financial responsibility requirements of the bill to all potentially liable parties might also increase standards of care. While not much is known about this area, we do know that certain types of concerns, such as small trucking firms, would have trouble meeting limits of liability if financial responsibility insurance were sought on an individual, firm-by-firm basis. Thus the bill would have to assist in the formulation of insurance pools if the requirement were to be meaningful. Doing so would bring the insurance industry more broadly into the picture and utilize their interests to induce higher standards of care.

Question: Describe a no-fault compensation scheme for third party damages?

Answer: Attached is the portion of the Interagency Task Force Report on Hazardous Substances which describes an option for a no-fault scheme. This option would have taken a comprehensive no-fault approach covering all actions, including third party damages. It was rejected on the grounds that, from an equity point of view, and notwithstanding any penalty provisions, such a scheme would tend to subsidize those who did not undertake high standards of care at the expense of those who did.

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Federal No-Fault Approach

An alternative to a fee supported fund scheme would be the creation of a no-fault system. This system might consist of a no-fault insurance fund, an operating program and an incident investigation.

No-Fault Insurance Fund. The fund would pay the allowed costs for all covered incidents. Participation in the fund would be mandatory and would be in lieu of any other liability for costs of covered incidents. Assessments would be adjusted annually to cover all paid and outstanding claim incurred in the prior year. Assessments would be at a single rate (but not cost) for all participants. The mechanism for assessing costs could be any of the options considered for an industry-supported fund. No adjustment for relative risk would be made, at least initially. The rationale is two-fold: First, risk assessment is imprecise in this area and better actual allocation can be achieved by a penalty system (civil and criminal) for standards or license violations which result in covered incidents; second, risk is more appropriately handled through safety regulations to minimize the likelihood of occurrence. Definitions of covered incidents would need to be precise to provide certainty to participants.

The purpose of the no-fault provision is to increase efficiency in claims adjustment, significantly reduce time and costs through eliminating need for conventional insurance coverage and eliminating litigation. The system would also eliminate the a priori need to determine ownership, responsibility, etc. Issues are limited to whether incident is covered, who was damaged and what are extent of covered damages.

Incident Investigation Board. The Board would be responsible for investigating the causes of all covered incidents and preparing findings indicating the Board's assessment of causation and whether standards or license violations were significant contributing causes. In the event of such violations the Board would refer the matter to the appropriate enforcement agency for judicial action. Resulting monetary penalties would be added to the fund.

The purpose of this provision is to ensure that "bad actors" are not immunized by the no-fault character of the system. Further, it provides that penalties are not assigned to those responsible for a covered incident so long as the incident was not caused by deviation from the established rules. The inclusion of penalties into the fund should provide more equitable contributions, since the assessment of those not incurring penalties will be lower as a result of the penalty inclusion in the fund.

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Operating Program. The operating fund would cover the authorized costs of immediate hazard abatement, permanent hazard remedy and covered third party damages for all covered incidents as well as specific administrative costs. It would receive funds from fees assessed annually on the industry, be reimbursed for direct costs from the insurance fund for each covered incident and receive penalties assessed against violators of standards which resulted in covered incidents.

Immediate Hazard Abatement. Federal On Scene Coordinators would determine what was necessary to effect immediate hazard abatement and would authorize appropriate parties (the "spiller"; private contractors; federal, state and local agencies, volunteers, etc.) to undertake the necessary actions and to incur costs to be reimbursed by the operating fund.

Permanent Hazard Abatement. Appropriate federal bodies (such as the National Regional Response Teams) would analyze and evaluate permanent hazard remedy options and select the most appropriate action to be taken and by whom. They would then authorize the appropriate parties to undertake the selected action subject to reimbursement by the operating fund.

Third Party Damage Reparations. The Fund Administrator would evaluate claims for covered damages resulting from covered incidents and determine their validity and would determine the amount of damages not otherwise covered to be paid. Damages covered by other reparation systems would not be covered.

The purpose of the operating program is to perform the functions of hazard abatement and remedy as well as third party damage reparations without concern for fault finding. Determination of the nature and extent of hazards and damage can be made without regard to the availability and/or financial viability of a "bad actor."

Question: Why doesn't the Administration Bill provide for a Federal cause of action? Is this issue being studied?

Answer: Inclusion of a Federal cause of action was considered and rejected during interagency review. The primary reasons the Administration did not create a Federal cause of action for damaged third parties (especially for medical costs) were:

(1) Such a provision would of necessity pre-empt State tort law. In order to respond quickly to the abandoned sites problem, the Administration could not adequately determine the concepts on which the various States have developed their tort law and propose a clearly superior approach. Instead, the Administration bill refrains from any preemption of State authority to raise funds to compensate victims or modify existing State tort law. Therefore, the States may act to provide improved access to the courts or a State run compensation program.

(2) Any Federal cause of action would have to cover all third party damages, otherwise injured parties (and defendants) may have to bear the delay and costs of two trials--one in State courts and the other in Federal courts. In some States, plaintiffs would be prohibited by State law from pursuing both avenues of relief.

(3) The Federal court system and the case load handled by the Department of Justice is already overwhelming the Federal judicial system. A Federal cause of action for third parties would further tax this already stressed system and it is not clear that more expeditious settlements would result.

(4) It is the Administration's position that any decision regarding compensation for personal injury should be made in the context of government-wide policy on health care and not in the superfund context.

In response to a question on June, 1979 during hearings held by the Senate Committee on Environment and Public Works, Tom Jorling, Assistant Administrator at the EPA, stated that a Federal cause of action was being studied further. This response to the question was in error. With respect to Superfund, further study of a Federal cause of action is not underway within the Administration at this time.

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Q. What research is EPA currently performing on the health effects of hazardous waste? What epidemiological research is being carried out?

A. To date EPA has not conducted any direct research on the health effects of hazardous waste. There are three studies underway, however, which should produce results or information that will contribute to knowledge in this area. First, EPA is researching liver disfunctions in populations ingesting wellwater contaminated with organic residues from dumped pesticides. Second, we are investigating the potential contribution of the land application of sludge on food chain crops to kidney damage and occurrence of cancer. Third, EPA has begun an internal feasibility study of conducting epidemiology studies at identified problem hazardous waste sites.

In FY 1980 EPA's research program plans to conduct a multimedia emergency response project which will include field investigations of populations exposed to hazardous wastes and 4-8 short-term epidemiological studies of exposed populations at problem sites.

Question: Give the rationale for the distinctions in the Administration proposal with regard to preemption between spills and uncontrolled sites.

Answer: The Administration's proposal calls for State preemption for anything covered by the proposal with regard to spills--i.e., cleanup, property damages, limited economic damages, etc. In contrast to this, the proposal does not call for any State preemption with regard to uncontrolled sites. The reason for this distinction is relatively simple.

Insofar as spills are concerned, the proposal contemplates Federal response on an as-needed and comprehensive basis for all spills which are determined to require response. Thus all spills requiring response would receive it, each spill would be completely cleaned up, and any property damages and limited economic damages (essentially to fishermen) would be compensated. For these activities, then, no State authority or funds would be needed.

With regard to uncontrolled sites, the proposal contemplates a phased-in approach and one which is limited to containment. Therefore, if a State wished to act at a site which did not have immediate Federal priority and/or wished to undertake a permanent remedy, the "superfund" would not be available to pay for such actions. In addition, the "superfund" scheme requires State cost-sharing for containment and for maintenance of containment. Because of these limitations and requirements, the Administration felt that preemption would neither be equitable nor in the best interests of public health and environmental protection.

Q. What is EPA doing with the $4 million Congressional add-on for a demonstration of treatment, disposal and containment schemes at Love Canal?

A. On April 24, 1979 EPA awarded a $3.8 million grant, in the form of a cooperative agreement and authorized by Section 8001 of RCRA, to the New York Department of Environmental Conservation. New York requested two extensions, until July 20, for review of the cooperative agreement and negotiation of special technical conditions. Included in the scope of work are: gathering and analysis of data; construction of remedial containment and collection systems; design, construction, and operation of a permanent treatment facility; monitoring; a transport study; a reclamation study; risk assessment and epidemiological studies among Love Canal area residents.

The remaining $200,000 of the Congressional appropriation was already used for a mobile carbon filter waste treatment unit to treat wastewater at the site and to develop information on permanent treatment requirements.

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Question: Project the estimated costs to the Superfund if it were expanded to cover out-of-pocket medical expenses.

Answer: As was stated at the hearing, virtually no data exists on the out of pocket medical expenses of individuals affected by toxic wastes from abandoned sites. Nor does any data exist about the number of sites which have actually caused human health problems as opposed to those which might potentially do so. Finally, no data exists concerning the number of people per site who might be affected. For these reasons, the analysis which follows must be viewed as a set of estimates and projections which have virtually no basis in reality. Notwithstanding, these estimates and projections can at least serve an illustrative purpose of indicating what resources the superfund would need if these figures were, in fact, real.

As far as average out of pocket costs are concerned, information developed by the Labor Department from analyzing Social Security disability roles indicates that for people who are unable to work--which may be a reasonable substitute for people affected by toxic wastes--average medical costs over a five year period are in the range of $8000. On an annual basis this comes to $1600.

As far as the number of sites is concerned, of the 2000 sites considered potential threats, we must simply make a guess that one-quarter, or 500, will have actual human health impacts. Another guess is that the average number of people affected per site will be 100. This would mean somewhere in the neighborhood of 50,000 people would receive out-of-pocket medical expense compensation each year. The annual cost to the fund, using these figures, would be $80 million ($1600x500x100).

Three critical points must be made about these figures. First, as cannot be emphasized enough, they are simply guesses and could be inaccurate by orders of magnitude. If, for example, there are significant health problems at 1000 sites and the average number of people affected per site is 200, then even using the same $1600 per person estimate we have an annual cost figure of $320 million.

Second, these figures do not include any catastrophic situations such as the poisoning of a drinking water supply system for 25,000 people. If only one of these occurs each year for 5 years, and the average out-of-pocket costs per person are $1,000, the total cost would be $125 million.

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At Love Canal, for example, more than $1 billion in health claims have been filed. At the James River Kepone site, approximately $64 million in personal injury claims have been filed.

Third, these figures do not include any out of pocket medical expenses for the additional 30-50,000 sites which the Hart report suggests may contain hazardous wastes. If we say that only 5%, or 1500, of the lower 30,000 figure have health problems associated with them, that an average of 100 people per site experience such problems, and the average annual cost is $1000 per person, then the total annual cost above the $80 million reached earlier would be $150 million.

For all of these reasons, but especially the first, the Administration does not believe that out of pocket medical expenses should be covered by superfund. As the first caveat indicates, we really haven't any realistic means for projecting what costs would be. Therefore the Administration suggests that medical costs associated with hazardous waste sites be considered in the context of National Health Insurance and not superfund.

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Question: Project the estimated costs to the Superfund if it were expanded to cover operation and maintenance of containment.

Answer: Very little systematic data exists from which to extrapolate these costs. Therefore, in order to answer the question, it was necessary to make numerous assumptions and guesstimates which cannot be supported by hard data. EPA has determined that the program will be phased in and that over the first six years the number of new sites to be fully investigated will rise from approximately 70 in 1980 to approximately 500 in 1985, with a total of 1600 full investigations (see column I of table 1). A second estimate is that an average of 75% of these sites will require containment with concommitant long term O&M (annual figures in column II). Review of those few sites where O&M costs could be projected indicates that the average annual cost of O&M for a site may be in $200,000 range. The future annual O&M costs for all sites investigated in a given year which would require containment O&M is shown in column III. Since new sites would be added each year, column IV shows the cumulative annual O&M costs for each of the first six years. By the sixth year, the annual O&M costs to the fund could be in the range of $240 million dollars.

It is important to note that unlike emergency assistance and achieving containment, which are one time costs, annual O&M costs would continue at this level for many years. This means that the fund would have to be assured of sufficient revenues to cover these costs far into the future. EPA's best guess is that 50% of the sites (or 600) would require O&M for 5 years or less, 40% (or 480) for 6-10 years, and 10% (or 120) for 11-20 years. Thus, the total costs over the full period of containment could reach $2 billion for just those 1200 sites acted upon in the first six years (see table 2). Of course, depending upon technology development and responsible party actions, these costs may be somewhat lower.

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Table

Projected Annual Costs for Operation and Maintenance of Containment

Year	I # of Sites[1/] Investigated	II # of Sites[2/] Requiring Containment	III Annual[3/] O&M Costs (in $ millions)	IV Cumulative Annual O&M Costs (in $ millions)
1980	70	50	10	10
1981	130	100	20	30
1982	200	150	30	60
1983	300	225	45	105
1984	400	300	60	165
1985	500	375	75	240
Total	1600	1200	240	

1/EPA estimate of six-year phase-in
2/EPA estimate that 75% of sites investigated will require containment
3/Based on estimated average annual O&M costs of $200,000 per site

Table 2

Projected Total Costs for O&M

# of Sites	Avg Cost/Site	# of Years	Total Cost (in $ millions)
600	$200,000	5	600
480	$200,000	10	960
120	$200,000	20	480
1200			2,040

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Question: How would the fee system have to be expanded, and what would be the economic impacts, if coverage of the fund were extended to include 20 year containment costs and out-of-pocket medical expenses? Provide this analysis assuming: (1) federal appropriations at the level in the Administration proposal and (2) no federal appropriations.

Answer: Because of the high degree of imprecision in our estimates of costs associated with maintaining containment and out-of-pocket medical expenses, the attached analysis is not exactly matched to the cost projections contained in our analyses of these costs. Nor does it take into account different levels of appropriations. Rather it examines the economic impacts of expanding the fee system to generate between $900 and $950 million per year. These figures seem to be in the general area of the revenues that would be needed to pay for the expanded coverages. An increase or decrease of $50 to $100 million per year would simply cause a proportional change in the impact figures presented in the analysis.

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Economic Impact Analysis

Expanded Superfund Fee System

Expanding the superfund fee system from $400 million per year to a much larger amount will eventually create some economic dislocations. Unfortunately, it is not possible to say at what point those dislocations will become so great as to be unwarranted. Our ability to analyze such a complex issue is not that finely tuned. In this analysis we will instead examine the impact of expanding the fee system to generate $950 million per year. This will not tell us just how large the fee system can be, but will provide some idea of the impacts that can be expected if the fee system is expanded.

Macroeconomic Impacts

A $950 million per year fee system is still very small in relation to our $2,400 billion economy. Expanding the fee system to this level would not have a noticeable impact on the U.S. economy.

Microeconomic Impact

Petroleum Refining

Our earlier analysis indicated that a fee system designed to collect $100 million from crude oil would result in a 1.85 cents per barrel increase in the price of crude oil. Doubling the fee would raise this figure to 3.7 cents per barrel. Such an increase would amount to about one-quarter of one percent of crude prices. It is expected that such an

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increase could be passed along by refiners without a noticeable impact on the industry. The resultant increase in the price of gasoline would be about 0.09 cents per gallon. In the context of the large increases in crude oil and gasoline prices that we have seen recently, and expect in the future, such an increase seems quite small and easily manageable.

Petrochemicals

In our previous analysis we found that collecting fees of $200 million per year from the petrochemical industry would require a fee on petrochemical feedstocks of just under two percent. Using a computer model of the industry we estimated that such a fee would increase final petrochemical product prices by an average of just over 0.6 percent. While it was anticipated that such an increase might slightly dampen the rate of growth of the industry, it was not anticipated that any significant economic dislocations would result.

In this analysis we have assumed that the expanded fee system would require fees on petrochemical feedstocks of approximately five percent of current market prices in order to generate $500 million per year. We have used the petrochemical computer model to determine (a) the impact of fees on petrochemical prices, (b) the impact of the fees on feedstock and process use within the petrochemical industry, and (c) the impact of the price increases on domestic demand for petrochemical products. Finally we have taken a judgmental look at the exports and imports of petrochemical feedstocks to see what the expanded fee system might have on these two important factors.

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Prices

Table I presents the price changes that are expected to result in the petrochemical industry as a result of both the previously proposed fee system and the expanded fee system. As might be expected price increases from the expanded fee system are about 2.5 times those from the previous system. Whereas final product prices rose an average of 0.67% under the previous system, average price increases under the expanded system are about 1.7%.

To maintain consistency with the previous analysis we have assumed that the fee system will be in full effect in 1980. However, it has been decided to implement the fund in phases so that the full impact of the fees will not be felt until 1983. By that time chemical prices will have risen, significantly so that the percentage impact of the fee system will be considerably less. If prices rise an average of 10% per year, which is a conservative estimate for chemicals, the average price impacts of the superfund fee system in 1983 would be 0.5% under the previous system, and 1.3% under the expanded system.

Process Economics

Because the fees will affect all feedstocks uniformly, no changes in feedstock or process use are anticipated. As with our previous analysis, the computer simulation of the industry showed that exactly the same feedstocks and processes would be used with and without the expanded fee system.

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Table I

Expanded Superfund Fee System
Estimated Petrochemical Feedstock Price Increases[1/]

Feedstock	Estimated 1980[2/] Price Without Fee (Cents/lb.)	Maximum Fee At 2% (Cents/lb)	Maximum Fee At 5% (Cents/lb)
Toluene	11.7	0.234	0.585
Xylenes	18.7	0.374	0.935
Napthalene	8.4	0.174	0.420
Benezene	15.1	0.302	0.755
Butylene	8.2	0.164	0.410
Butadiene	25.7	0.514	1.285
Butane	9.5	0.190	0.475
Methane[3/]	6.0	0.120	0.300
Ethylene	15.7	0.314	0.785
Propylene	9.7	0.194	0.485
Carbon Black	4.3	0.086	0.215

1/Fees as a percent of final product prices will be much less than for feedstocks.
2/Data Resources, Inc. estimates for 1980
3/Excludes that portion used in producing ammonia.

NOTE: This table should be read in conjunction with Table I of the previous economic impact analysis done by the Administration.

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Domestic Consumption

In the previous analysis it was assumed that final product price increases on the order of 0.67% would not have a significant impact on industry sales. In this analysis we used a computer model of the domestic demand for chemicals to examine this question more closely. For a group of fourteen selected final products the expanded fee system would result in domestic consumption levels approximately 0.5 percent below those otherwise expected. However, since consumption of these products is expected to grow from 2% to 10% per year, a decline in consumption of slightly over 1/2% would be experienced as a reduction in industry growth rather than as an absolute decline in sales. In other words industry sales will continue to grow over the period, albeit at a slightly reduced rate.

Exports

In the previous analysis, the impact of the proposed fee system upon exports was not examined, largely because cost increases were thought to be small in relation to the existing cost advantage of U.S. producers. In this analysis we have taken the time to examine the possible impact that the proposed fee system might have on both exports and imports.

Currently, the U.S. has a significant cost-price advantage in petrochemicals, as shown in Table II, because a significant portion of chemical feedstocks are derived from lower cost domestic supplies.

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Table I

Expanded Superfund Fee System

Petrochemical Industry

COMPARATIVE CHEMICAL PRICES
January 1979

PRODUCT	UNITS	EUROPE	UNITED STATES
Ethylene	¢/lb	20	13
Benzene	¢/gal	120	95-100
Ethylene Glycol	¢/lb	25	19
Styrene	¢/lb	35	21
Phenol	¢/lb	28	19

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As a result of this advantage U.S. chemical exports in 1980 are estimated to total approximately $3.2 billion, roughly 10 percent of total 1980 sales.*

In the coming years this picture may change considerably. The proposed deregulation of crude oil and natural gas prices would eliminate the largest part of the U.S. trade advantage. On the positive side, U.S. manufacturers are expected to maintain their manufacturing advantage from economies of scale and from lower cost production methods. Nevertheless, current forecasts of U.S. chemical exports are for a decline from current high levels through 1985 and U.S. energy prices rise to world levels.

The greatest loss that the industry could sustain from a decrease in exports would be the after-tax value of the superfund fees. This could come about either if: (a) the U.S. manufacturers choose not to raise prices but to absorb the total amount of the fees; or, (b) U.S. manufacturers raise prices to the point where their loss of sales results in an equivalent after-tax loss of profits. U.S. manufacturers would never raise prices by an amount greater than (b) simply because it would always be cheaper and easier for them simply to pay the fees themselves.

Petrochemical exports without the fees are expected to amount to aporoximately $4.2 billion in 1985, compared with industry sales of $65 billion. Thus, exports would normally be expected to contribute

*Estimates by Data Resources, Inc.

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6.5%, or $32.5 million of the $500 million fee system in 1985. Absorbing these fees would result in a net after-tax loss to the industry if approximately $16.3 million.* If the industry were to pursue the alternate strategy, a loss in sales volume of $108 million would be required to produce an equivalent drop in after-tax profits.* A loss in sales volume of $108 million in 1985 would represent about 0.15% of total industry sales. Thus, the maximum adverse effect of the expanded fee system would be to reduce industry after-tax profits by $16.3 million, either directly through absorbtion of the fee, or indirectly through reducing by 0.15%. If the fee system were to be held at the previously proposed level of $200 million, the equivalent figures would be $6.5 million in after-tax profits and $43 million in sales.

This discussion of export impacts must necessarily be highly ambiguous. Predicting changes in the U.S. terms of trade for chemicals is a highly speculative business, even without the complication of a fee system. It is hoped, however, that the above analysis will be useful in pointing out the possible magnitude of the impact.

Imports

As the U.S. trade advantage in petrochemicals declines over the next few years, imports are expected to increase. With an expanded superfund fee system this trend would be slightly accelerated. As currently

*Assuming a 40% direct margin on sales and a 50% marginal income tax rate.

proposed the fees would be applied to imported feedstocks just as they would on domestic feedstocks. However, they would not apply to imports of intermediate and final products.

As with export effects, we are not able to do a detailed analysis of the impact of the superfund fee system upon imports. Instead we must rely upon our consultants' advice and our best judgment about the situation. Our consultants suggest that the full impact of the expanded fee system might lead to a 30% increase in imports of aromatic petrochemical derivatives and a 15% increase in imports of olefin petrochemical derivatives in 1985. Such an increase would displace U.S. industry sales amounting to approximately $80 million. This would lead to a loss in domestic after-tax profits of approximately $12 million, assuming the same margins and tax rates used earlier. If the fee system were kept at the previously proposed level of $200 million, the impact on imports would be proportionately less. To prevent a loss of sales to imports, U.S. manufacturers would have to counter by reducing their own prices, or in this case, by not raising domestic prices to cover the fee system. Such an action would reduce profits on all of their domestic sales. Because domestic sales are so much larger than imports, our analysis indicates that the industry would be better off by allowing a small increase in imports than by reducing domestic prices.

Inorganic Materials

The previously proposed fee system called for $100 million per year to be collected from twenty-three inorganic chemicals and minerals.

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At this level the required fee was $1.26 per ton. The fee limit of two percent of market price affected only one chemical, sulfuric acid.

Table III presents a summary of the impact of expanding the fee system for inorganics to $200 million per year and to $250 million per year, while still maintaining the 2% limit. In the expanded system eight new materials have been added- antimony and antimony trioxide, barium, beryllium, cobalt, nickel, selenium, and tin. Even with the addition of these materials, the required fees would have to rise considerably to generate the additional required revenues. At the $200 million level, the required fee would be $3.69 per ton. Seven materials would reach the two percent limit- ammonia, barium, chlorine, hydrochloric acid, nitric acid, sodium hydroxide, and sulfuric acid. Because these materials account for over ninety percent of the volume of materials on the list, the additional $50 million required to reach $250 million must be spread over a thinner base. Consequently, the required fee rises considerably to $15.96 per ton, still with a 2% limit.

Six additional materials reach the two percent limit-arsenic trioxide, bromine, ethylene dibromide, sodium dichromate, hydrofluoric acid, and potassium hydroxide.

The economic impact of these higher fees will depend upon the competitive position of U.S. manufacturers of each material. If the market positions allow manufacturers to pass through the fees, no significant

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Expanded Superfund Fee System

Inorganic Materials

Inorganic Material	Annual Use (Tons)	List Price ($/Ton)	Fee as a % of Price: $200 mil. ($3.69/Ton)	Fee as a % of Price: $250 mil. ($15.97/Ton)	Total Fees: $200 mil.	Total Fees: $250 mil.
Arsenic	17,000,000	132	2.0	2.0	44,880,000	44,880,000
Antimony-Sb	2,659	3500	.11	.46	9,813	42,435
-Sb_2O_3	9,097	3440	.11	.46	33,568	145,261
Arsenic-	650	NA	NA	NA	2,399	10,374
Arsenic Trioxide	31,000	230	1.6	2.0	114,390	495,000
Barium	2593000	100	2.0	2.0	5,186,000	5,186,000
Beryllium-	70	16000	.02	.1	258	1,117
Bromine: Bromine	28500	500	.74	2.0	105,165	285,000
Methyl Bromide	10000	820	.45	1.95	36,904	159,884
Ethylene Dibromide	114000	700	.53	2.0	420,660	1,820,352
Cadmium	5000	4500	.08	.35	18,452	79,843
Chlorine	11,500,000	120	2.0	2.0	27,600,000	27,600,000
Chromium	4000	NA	NA	NA	14,762	63,900
Sodium Dichromate	143,000	740	.50	2.0	527,720	2,116,400
Chromite	995,000	NA	NA	NA	3,671,898	15,868,525
Potassium Dichromite	NA	960	.38	1.66	NA	NA
Chromic Acid	33,000	1430	.26	1.12	121,782	526,956
Cobalt	9,997	50000	.01	.03	36,892	159,535
Hydrochloric Acid	1,000,000	125	2.0	2.0	2,500,000	2,500,000
Hydrofluoric Acid	288,000	700	.53	2.0	1,062,821	4,032,000
Lead-Lead	1,500,000	960	.38	1.66	5,535,525	23,952,555
Lead Oxide	120,000	1320	.28	1.21	442,842	1,916,204
Mercury	2,000	4400	.08	.36	7,381	31,937
Nickel	231,000	5800	.06	.28	852,471	3,688,668
Nitric Acid	5,642,000	162	2.0	2.0	18,280,080	18,280,080
Phosphoric Acid	1,400,000	400	.92	2.0	5,166,490	11,200,000
Potassium Hydroxide	216,000	500	.7	2.0	797,116	2,160,000
Selenium	449	30000	.01	.05	1,657	7,170
Sodium Hydroxide	13,000,000	184	2.0	2.0	47,840,000	34,500,000
Sulfuric Acid	34,500,000	50	2.0	2.0	34,500,000	34,500,000
Talc	63,100	15080	.24	.11	232,861	1,007,504
Total	90,441,522				199,999,907	250,576,712

economic impacts would be anticipated. If U.S. manufacturers of any one product are undergoing a particularly difficult period, then pass throughs may not be possible, and dislocations may result.

Our review of the market positions for each of the materials listed in Table III indicates that most producers should be able to pass through the fees without much difficulty. One product--ammonia--stands out as distinct exception.

Ammonia

The U.S. ammonia industry is currently beset by overcapacity at home and large quantities of imports from abroad, particularly from the Soviet Union. Even though prices have fallen considerably, U.S. producers' prices are apparently still higher than import prices. Thirty-two plants which last year accounted for 28% of U.S. production have been closed either permanently or temporarily. The remaining plants are operating at only 74% of capacity.*

Under these conditions, assessing a fee of two percent of sales prices this year would most likely add approximately $35 million to the industry's before tax losses. Because the fee will apply to imports as well as domestic production, the U.S. price under ordinary circumstances would be expected to rise to cover the fees. However, the

*From an article in The Washington Post, July 12, 1979; p.F.2.

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existence of such a large gap between import prices and domestic prices indicates that even if import prices rise to cover the fees, it is doubtful that domestic prices could be pushed up any further.

Just how long this unhealthy situation is likely to continue cannot be determined precisely, although it is safe to say that it will be some years before balance is restored to the industry. In the meantime it is possible that the extra burden of the fee will be enough to cause a few more plants in the industry to close. Of course, even if the fee were held at its previous level of $1.26 per ton such an impact might be possible, though this is less likely. Unfortunately, we have not been able to examine this situation in more detail to estimate just how many plants, if any, might be affected.

Question: Describe a sliding-scale fee system, based upon degree of risk imposed, which might provide incentives for a higher standard of care.

Answer: We know of no way to develop a viable risk-based fee system. During the formative stages of the Administration's development of the superfund proposal, use of a risk-based fee system was considered and rejected on the grounds that such a system:

- is beyond our current state of knowledge;
- could not be developed to be reasonably equitable;
- would be extremely difficult to implement and administer;
- is not the best means for providing a meaningful incentive for a higher standard of care.

In the Administration's view these problems still obtain and therefore no risk-based system has been developed.

In order to develop a risk-based fee system, the first task is to come up with a meaningful, widely acceptable and operational definition of risk. Since no such direct definition exists, a common means for doing this is to find a substitute variable for risk. The factor which most often comes to mind is the toxicity of a hazardous substance or hazardous waste.

Unfortunately, after some initial scrutiny, it was determined that toxicity alone is not a useful substitute for risk. Risk is equally, if not more so, dependent upon the probability of a spill. Insofar as the toxicity of a hazardous substance is concerned, the current list of 299 substances designated under Section 311 have, of course, been categorized according to toxicity for purposes of "reportable" quantities. The measure of toxicity used as the basis for this categorization is acute aquatic toxicity.

While acute aquatic toxicity is sufficient for reporting purposes related to potential hazard once the substance has been spilled, we do not believe it is useful or equitable for purposes of collecting a fee which would be used for spill cleanup. Part of the reason for this is that a substance's toxicity may bear little relationship to the costs of cleanup. More importantly, however, toxicity is not a good indicator of the probability of a spill. The probability of a spill of a substance is a function of packaging methods, standards of care, modes of transportation, shipping distances and many other factors. The relevant factors are dependent upon whether the spill occurs while in transport

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or at a facility. The Federal government does not have sufficient information on these factors to set an equitable fee and, in any case, believes that the complexity involved in using a sufficient number of them to measure hazard potential prior to a spill would make the fee collection system incredibly burdensome to industry and government and, in simple terms, unmanageable. Generation of the necessary data would delay implementation of the fee system by years. Even if such data were eventually available, a review of existing models for estimating the probability of spills shows that there is little agreement on widely acceptable models which could be applied broadly. With respect to abandoned sites, we are unaware of any work which purports to estimate the probability of a release of wastes from the site.

In the near future, EPA expects to expand the list of designated hazardous substances to include those which exhibit chronic toxicity. Since chronic toxicity requires an even more complex and less well understood set of assumptions and understandings, the factors involved in translating this to the concept of risk are magnified.

In regard to hazardous wastes, the problems of using toxicity or "degree of hazard" as a substitute for risk are equally insurmountable. Among the reasons are:

- With the exception of dioxin and perhaps a few other "super-hazardous" wastes, we generally lack information or techniques to define or distinguish

  o high versus low hazard within a category of hazard (e.g., between high and low hazard for toxic organics, mutagens, carcinogens and radioactive waste).

  o different hazards among hazard categories (i.e., which is worse--the threat of an explosion or the threat of cancer).

- This problem is further complicated by the fact that judgements of high versus low hazard between categories of hazard would also have to be made such as the comparative risks of highly ignitable waste as compared to limited toxicity waste.

- More importantly, the risk of a particular waste depends as much on the management situation (i.e., amount of waste, presence of other wastes, the geo-hydrology, the proximity to population) as on the inherent hazard of the chemicals involved. We simply lack the information on these matters necessary to come up with a usable definition of risk.

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It is for these reasons, among others, that EPA has decided not to use the "degree of hazard" approach as the basis of a superfund fee system.

As a result of these deliberations, the Administration developed the "feedstock-raw materials" fee system contained in the superfund proposal. This system was designed to balance two objectives--equity and ease of management. Thus the fee system spreads the burden among and through all segments of industry and consumers involved in the commerce of hazardous materials while at the same time remaining relatively simple to administer and quick to initiate. The primary reason why the fee system is manageable is that the current fee system is intended to be used for only one purpose--to provide sufficient resources to respond to emergencies--and not for the additional purpose of providing an incentive for higher standards of care.

As far as hazardous substance spills are concerned, and the history of the oil spill program bears this out, the Administration believes that the liability and penalty provisions of the proposal provide the primary incentives for higher standards of care. This area might be strengthened, however, by extending liability and financial responsibility requirements to all those persons involved in hazardous materials commerce not currently covered by these requirements.

As far as the prospective management of hazardous wastes is concerned, the regulatory scheme being developed under RCRA is aimed precisely at encouraging higher standards of care. Insofar as abandoned sites are concerned, it is too late to have higher standards of care--the problem is already here. The proposal does, however, provide a strong incentive for a financially viable responsible party to cleanup its own mess in the form of a penalty of 2 1/2 times the cost of government response if the responsible party does not cleanup.

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[From the Congressional Record, July 11, 1979, pp. S9173–S9180]

STATEMENTS OF SENATORS JOHN C. CULVER, EDMUND S. MUSKIE, AND ROBERT T. STAFFORD ON INTRODUCING S. 1480

ENVIRONMENTAL EMERGENCY RESPONSE ACT

● Mr. CULVER. Mr. President, today I am introducing the Environmental Emergency Response Act. This legislation provides critically needed resources to cope with one of the most pressing environmental problems confronting our society: The releases and spills of toxic and hazardous chemicals into soils, rivers, and groundwaters.

By now we all know of numerous examples of the damage caused by the release of toxic chemicals in the environment. Chemicals spilled during transportation, leaking from old dump sites, or released in other ways have produced serious human injuries and property damages and have presented even greater threats of potential damage.

A series of legislative initiatives has been introduced to deal with this pressing problem. It began in the last Congress, when the Senate Environment and Public Works Committee developed legislation dealing with the spill of oil and hazardous substances into America's waters. That legislation was subsequently approved by the Senate, but no final congressional action was taken.

Among the most comprehensive legislative proposals to address the hazardous waste issue is the administration's bill. S. 1341, which Senator MUSKIE and I introduced by request on June 14, 1979.

This bill establishes a fund for the removal and cleanup of spills and releases of oil, hazardous wastes, and other toxic substances. The fund, which has a proposed cap of $1.65 billion, would be financed from fees on crude oil, petrochemical, and inorganic feedstocks, and Federal appropriations. No third-party personal injuries would be compensated, and economic compensation would be limited to commercial property losses or damages resulting from spills of such hazardous substances into water.

The Subcommittees on Environmental Pollution and Resource Protection have held several hearings here in Washington, D.C., and around the country on the damages posed by hazardous wastes. At a hearing the two subcommittees held on March 28, 1979, citizens who lived near the Love Canal in Niagara Falls, N.Y., testified about high incidences of birth defects, miscarriages, skin, liver, and kidney ailments, epilepsy, and depression and other emotional disturbances which were partially caused or exacerbated by exposure to toxic wastes in that community. Some 230 homes have already been condemned by the State of New York, and hundreds of other citizens of the Love Canal area want the State to buy their virtually worthless homes. One glaring omission from the administration's bill is the absence of any provision to provide payments from the fund to compensate people for injuries suffered from exposure to hazardous substances.

In addition, the Subcommittee on Resource Protection, which I chair, held a hearing last month in Charles City, Iowa, where a dumpsite full of hazardous wastes sits atop the Cedar Valley aquifer, the major source of water for more than 300,000 Iowans, and lies only a few hundred feet from the Cedar River.

The LaBounty dumpsite in Charles City is currently leaching chemicals at a very slow rate. It does not at present pose any apparent imminent—and I stress "apparent" and "imminent"—threat to public health. But the effect of a major leak into the Cedar River or the Cedar Valley aquifer could be an economic and health disaster of unparalleled proportions for the State of Iowa. Environmental Protection Agency (EPA) officials have acknowledged at our hearings that the administration proposal would provide almost no relief to citizens living in downstream communities should they develop illnesses from contaminated drinking water.

EPA, the State of Iowa, the city of Charles City, and Salsbury Laboratories, Inc., which is operator of the dumpsite, are working together under a Federal grant to contain leaching at the LaBounty site. But it is just one of an estimated 2,000 that EPA officials believe may be potentially hazardous to public health; and clearly some unified approach must be taken to resolving the problems associated with these dumps. If it succeeds, the demonstration project at Charles City, which I requested, may point the way toward relatively inexpensive solutions elsewhere.

As a result of these hearings, I have concluded that the administration's bill, while an important first step, is not sufficient to deal with the whole range of problems associated with hazardous waste dump sites. The legislation I am introducing today will address the major shortcomings of our current procedures for coping with hazardous waste emergencies. This bill is the product of a bipartisan effort of two subcommittees of the Environment and Public Works Committee. I want to emphasize the importance of the contribution made by Members of both sides of the aisle on this subject. The ranking minority members of the two subcommittees, Senators STAFFORD and CHAFEE, have had an important role in helping Senator MUSKIE and me develop this legislation. Senator MOYNIHAN contributed by chairing a hearing at Niagara Falls to look at the most extensive problem that has developed so far—the incident at Love Canal.

The Environmental Emergency Response Act covers all releases of hazardous chemicals into the environment, not merely spills or discharges from abandoned waste disposal sites. Coverage would, for example, extend to incidences such as the discharge of Kepone into the James River in Virginia, which resulted in the closing of that body of water to commercial fishing indefinitely. It, however, does not cover oil spills. This subject is being addressed by other legislation. The problems posed by hazardous chemicals alone are widespread and complex and require extensive attention in their own right.

The legislation puts the initial responsibility for clean-up and damages resulting from a spill or release on the owner or generator of the hazardous substance. This provision assures that those actually responsible for the incident will undertake the effort to contain the spread of the chemicals and minimize potential

damage. This also serves as an incentive for the sound treatment and handling of hazardous substances in order to prevent accidents in the first place.

A major problem, however, is that the original owners or parties responsible for leaking from old or abandoned dump sites often cannot be identified or lack the financial resources to take prompt and effective action to contain an accident. Where no owner can be held responsible, a fund will be established to pay the costs involved. Revenue for this hazardous waste response fund is to be collected from the importers, manufacturers, and generators of hazardous substances up to a maximum of $500 million. The fee would be implemented in such a way as to spread the cost broadly throughout the economy and avoid creating incentives for illegal dumping, thereby not placing an unfair burden upon segments of the hazardous substances industry.

The fund will be used for emergency responses to contain or clean up a chemical release when the original owner or operator cannot be found or persuaded to act. There would be no financial limit on the emergency action taken by the Government, which could include evacuating or relocating residents, providing alternative water supplies if drinking water was contaminated, and physically removing wastes to another location if necessary. Money for 100 percent of the cost of these emergency actions would be provided under this legislation. Once these initial actions are taken, however, both the Federal Government and the State would contribute to the cost of any long-term or permanent remedial action that would still be necessary. Responsible parties would have to reimburse the fund.

One of the main differences between the Environmental Emergency Response Act and the administration's proposal is the degree of compensation for economic or personal injury. Under this new legislation owners of inactive or abandoned waste sites, dumpers or spillers are liable for the loss of personal property and natural resources and out-of-pocket medical expenses of those affected. When those responsible cannot be identified, compensation can be recovered by the fund. The administration's proposal does not provide for third-party compensation of any of these losses, except economic losses of fishermen resulting from chemical spills. Social justice and fairness dictate that innocent individuals who have suffered from the harmful effects of hazardous substances should be able to recover at least part of the costs of their injuries, including the expense of treatment and diagnosis of medical problems resulting from exposure to these chemicals. The bill also creates a test for determing the causal link between the release of chemical substances and medical injury.

Finally, the fee collection mechanism and the hazardous waste fund would be subject to a sunset provision after 7 years.

Mr. President, the two subcommittees will hold hearings on this legislation later this month. It provides no magical "quick fix" to the chemical waste problem, which reflects years of inattention and neglect. The Emergency Environmental Response Act, however, is a most important tool that will help turn this multibillion dollar health and environmental crisis around.

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A solution to the problems posed by chemical releases in the environment will require a concerting response on the part of the public and private sectors. This is an area where appropriate and timely governmental action to protect the welfare of our citizens and natural environment is clearly in the public interest.

Mr. President, I ask unanimous consent that this legislation, along with accompanying explanatory materials, be printed in the RECORD.

There being no objection, the bill and material were ordered to be printed in the RECORD, as follows:

[The bill is reproduced immediately following this excerpt from the CONGRESSIONAL RECORD.]

FACTSHEET ON ENVIRONMENTAL EMERGENCY RESPONSE ACT

1. Title: "Environmental Emergency Response Act".

2. Coverage: Coverage is confined to releases (broadly defined) of hazardous substances designated under Section 311(b) of the Clean Water Act; any hazardous waste with the characteristics identified in the Solid Waste Disposal Act; any toxic pollutant listed under Section 307(a) of the Clean Water Act; any hazardous air pollutant listed under Section 112 of the Clean Air Act; hazardous chemicals or mixture defined in Section 7 of the Toxic Substances Control Act; others as the President may designate; and other substances that cause health problems.

Such releases can derive from spills, inactive or abandoned hazardous waste disposal sites, or other releases which present or may present a substantial danger to the public health or the environment.

3. Reporting requirements: The discharge of any hazardous substance in violation of Section 311(b) of the Clean Water Act and the release or disposal of any hazardous substance must be reported to the appropriate agency of the United States Government.

Six months after enactment of this Act, those subject to liability for hazardous substance disposal sites, not in compliance with the provisions of subtitle C of the Solid Waste Disposal Act, must notify the Administrator of the Environmental Protection Agency of such sites.

Failure to notify of such sites will result, upon conviction, in a fine of not more than $10,000, or imprisonment up to one year, or both.

4. Liability: Owners and operators of vessels and facilities which discharge, release or dispose of hazardous substances in violation of this Act will be held jointly, severally, and strictly liable for:

All costs of removal, containment or emergency response;

All damages for economic loss or loss due to personal injury;

Loss of personal property or use of personal property;

Loss or destruction of natural resources;

Loss of income or profits due to loss of personal property or natural resources;

Out-of-pocket medical expenses;

Loss of tax, royalty or rental profits by political subdivision.

Exception to such liability will exist only where a liable person can prove a discharge was caused by an act of God or war.

5. Government emergency response: The National Contingency Plan, which presently contains procedures for the removal, clean-up and mitigation of spills due to oil and hazardous waste, will be revised to reflect the requirements of this Act. In addition, a "National Hazardous Substance Disposal Response Plan" will be added. The addition will reflect the need for plans for the cleanup, containment, and mitigation to natural resources resulting from hazardous waste disposal sites.

To the greatest extent possible, the government response plan will follow those recommendations which are published in the revised National Contingency Plan.

6. The fund: A $500 million fund, known as the Hazardous Substance Response Fund, is established to pay costs, if no party can be held liable;

Fees would be placed on the generators of hazardous substances;

The Administrator would establish a fee system: Which minimizes the complexity of application and collection; which is equitable; which spreads the cost broadly across the economy; and which discourages illegal dumping.

7. Damages and claims: Where no party can be held liable, the fund will cover:

Containment or emergency response;
Removal costs;
Costs of Federal or State efforts at restoration;
Out-of-pocket medical costs;
Cost assessment of short-term and long-term injury; and
Research-related costs not to exceed $10 million per year.

8. Preemption and State role: No State would be preempted from imposing additional liability or stricter hazardous substance laws. The Federal government would take action to provide assistance at any site. However, in order for Federal participation relating to the containment, permanent remedy, or operation and maintenance of any given site, State governments would have to provide a percentage of the costs.

9. Other provisions: A test is created for establishing the causal link between injuries and the actual release of substances.

The fee collection and fund mechanism would be subject to a sunset provision after seven years.

No Federal appropriations contributed to fund.

Vessels in navigable waters and owners or operators of onshore or offshore facilities would have to have evidence of financial responsibility according to regulations prescribed by the President.

A study undertaken by the Environmental Protection Agency, Coast Guard, and General Accounting Office would provide information on the incentives for safer operation of vessels and facilities.

FACTSHEET ON ENVIRONMENTAL EMERGENCY RESPONSE ACT

I. The response fund:

Size of fund not to exceed $500 million at any time.

No federal appropriation. However, federal borrowing power is provided to start up fund and maintain cash flow when needed.

Fees are collected from importers, manufacturers and generators of hazardous substances.

Fees float at levels adequate to keep fund solvent.

Differences from Administration bill, S. 1341:

Size of S. 1341 fund not to exceed $250 million the first year, $375 million the second year, and $500 million during each of the following two years.

S. 1341 provides appropriation ($50 million the first year, $75 million the second year, and $100 million during each of the following two years) but no borrowing power.

Administration bill puts fees on producers of oil and feedstock chemicals (basic inorganic chemicals, like chlorine, which are used in the manufacture of finished chemical products). The EERA puts fees on generators and manufacturers of chemical products, not oil or feedstock products.

II. Coverage:

The EERA covers all releases of hazardous substances into the environment, including spills and leaching from abandoned or inactive dumpsites.

Hazardous substances are defined to include lists under the Clean Air, Clean Water, Toxic Substances and Solid Waste Disposal acts. The bill also contains a power to add new substances.

The Response Fund pays for emergency response, as well as the following losses:
Destruction or loss of use of real or personal property;
Loss of natural resources or their use;
Out of pocket medical expenses of affected parties;
Losses of federal or state income, such as taxes, fees, etc.

The Response Fund shares containment and disposal costs with state governments, with percentage of federal and state shares left for later decision.

No limit on expenditure for specific sites; no time limitation on period for containment.

Differences from S. 1341:

S. 1341 includes coverage of oil spills; the EERA does not.

The EERA contains a broader definition of hazardous substances than S. 1341.

S. 1341 contains no funds for coverage of third-party losses listed above, except economic losses of fishermen from spills.

S. 1341 limits emergency response for an individual site to $300,000.

III. Liability of owner/dumper/spiller:

Responsible parties are liable under federal law for all costs of removal, containment or emergency response, as well as third-party losses listed above under "coverage."

Cost of removal, containment, emergency response and third-party losses may be paid initially by the Response Fund and then collected from the responsible parties, if necessary.

Differences from S. 1341:

Administration bill holds responsible parties liable for a more limited list of costs and losses, and establishes liability limits for various situations.

IV. Financial responsibility: Operator of a facility must be financially responsible for liabilities, by insurance or bonding.

Differences from S. 1341: No similar provision in Administration bill.

V. Sunset provisions: Fund must be reauthorized by Congress after seven years.

Differences from S. 1341: Administration fund must be reauthorized by Congress after four years.

● Mr. MUSKIE. Mr. President, today, a number of members of the Senate Environment and Public Works Committee are jointly introducing legislation designed to help solve problems created by the spread of hazardous chemicals throughout our environment.

This is another step in the process that has involved this committee since 1970. Legislation first directed the administration to examine the problems of spills of hazardous substances. Then a regulatory program was added to the Federal Water Pollution Control Act in 1972. Last year, Senators STAFFORD, CHAFEE, and I introduced S. 2900, which expanded liability for hazardous substances spills into the water and created a fund to help deal with cleanup expenses and damages.

This year the Resource Protection and Environmental Pollution Subcommittees began to jointly develop this issue through hearings on the release of hazardous substances into the environment. These hearings began in March, and will continue through the summer.

This month we started our discussions on the legislative solutions to the problems posed by abandoned and inactive waste sites, as well as other sources, that spread toxic chemicals into the environment. Two days of legislative hearings were held in Washington, and a field hearing was held in Iowa. We have begun to examine the legislative alternatives, with particular focus on S. 1341, the administration's bill.

When we began, we had to answer two deceptively simple questions:

First, what shall we do to help cap the growth of chemical contamination of our environment?

Second, what cleanup and compensation should we provide?

Our present laws are not enough. We must correct deficiencies in liability established under present statutes. We must correct those omissions in the law having to do with past hazardous waste disposal methods

We must enlarge the Government's authority to respond to environmental emergencies generally.

The bipartisan effort that has dominated the development of this legislation will be important to any successful legislative solutions. I am pleased to see a number of my colleagues cosponsoring this legislation. The ranking Republicans on both subcommittees and the subcommittee chairmen have worked together to develop this bill we are introducing today. .

The bill will break some new ground. Because it does, some of the provisions will need further refinement. Those who disagree with specific items bear a responsibility to suggest improvements, and not just simply easy deletions.

There are hearings and markups still to be held on this legislation. The bill we introduce here will obviously go through further modification, and we invite comments from all those who are interested in this important subject.●

● Mr. STAFFORD. Mr. President, the bill which we are introducing is not so much a solution as a suggestion. We expect many of its provisions to be subjected to considerable and sometimes heated debate. Ultimately some of them—perhaps many—will be changed during subcommittee, committee, and Senate review. That is exactly what we intend.

Thus far, several bills have been introduced which attempt to deal with the problem of cleaning up releases of toxic or hazardous materials and compensating their victims. Some proposals deal only with one hazardous substance, oil. Others deal with a multiplicity of substances, but only one pathway, waste. This bill deals with virtually every substance and virtually every pathway.

Similarly, some bills attempt to solve this problem by creating a "superfund" or even an "ultrafund" to clean up releases and compensate victims. Other proposals rely primarily on the imposition of liability. Again, our bill embraces both of these approaches, not just one.

This bill contains novel and sometimes provocative solutions to what I believe is one of the most intractable, difficult, and intellectually demanding issues facing the country. People refer to the cleanup and compensation of victims from toxic pollution as an environmental issue. It is that, but also much more. It is a health issue, because these substances may threaten the health of large segments of our population. Cities and even entire States have been contaminated by chemicals suspected to cause cancer and mutations.

It is also an issue of justice, because we are dealing with human lives that are devastated by the impacts of these chemicals; children born with permanent defects, adults stricken with crippling diseases, entire communities with their supplies of drinking water contaminated beyond use. Some of these injuries are caused by the worst kind of callous and criminal conduct, but the wrongdoers are often beyond the reach of the law.

What this bill will test is our capacity to provide assistance and means of legal redress to an environment and a public injured by toxic pollutants. It is based on certain tentative conclusions, which include the following:

Human health and the environment have been and continue to be threatened and damaged by releases of toxic and hazardous substances.

At least some, and perhaps most, of the victims of these releases—whether they are innocent third parties or municipal corporations—are not compensated.

The persons responsible for such releases are often beyond the reach of the current judicial system, either because the law itself is

inadequate or because the wrongdoer has calculated how to avoid it.

Regardless of precautions, disasters will continue to occur, partially because it is impossible to legislate ignorance and carelessness out of existence. Our knowledge of what is harmful and what is not seems virtually certain to trail our ability to produce new chemicals. And even when the toxic nature of a substance is known, it can be—and has been—released through human error.

Because our knowledge and procedures tend to lag behind other technology, we will discover problems only after they materialize. In other words, a tragically large proportion of our efforts will be consumed in correcting mistakes rather than preventing them.

Thus far, emergency assistance, especially to victims, has been unavailable. What little that has been brought to bear has been directed towards cleaning up the releases of toxic pollutants, rather than helping the victims themselves.

Finally, efforts to clean up releases of toxic pollutants—whether they are spills into waters slow leaching from dumps, or broad-scale applications—have been largely uncoordinated and spontaneous.

The bill which we are introducing attempts to provide possible solutions to these problems. It imposes strict liability on those who release toxic and hazardous substances and alters the judicial standards of proof to ease the burden of victims in recovering for their damages. It creates a federally operated trust fund to pay when the person responsible cannot or will not. And, it involves State governments in the Federal response, both financially and technically. I will not attempt to highlight any specific provisions of the bill, because I am confident that those groups interested in its provisions will help define the issues as they see them.

On July 18 and 19 the Subcommittees on Environmental Pollution and Resource Protection will hold 2 more days of hearings on legislation before them, including this bill. I hope that during those hearings the many parties who are interested in this legislation will make their views known. With their help and participation we can craft a responsible solution to this problem.●

II

96TH CONGRESS
1ST SESSION

S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JUNE 21), 1979

Mr. CULVER (for himself, Mr. MUSKIE, Mr. STAFFORD, Mr. CHAFEE, Mr. RANDOLPH, and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Environmental Emergency Response Act".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) the terms "discharge", "vessel", "public vessel", "United States", "owner or operator",

"remove" or "removal", "contiguous zone", "onshore facility", and "offshore facility", shall have the meaning provided in section 311(a) of the Clean Water Act;

(2) the terms "State", "person", "navigable waters", and "territorial seas" shall have the meaning provided in section 502 of the Clean Water Act;

(3) the terms "disposal", "hazardous waste", and "hazardous waste generation" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act and the terms "generator" and "transporter" shall have the meaning apparent under subtitle C of the Solid Waste Disposal Act;

(4) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(5) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of a hazardous substance;

(6) the term "claimant" means any person who presents a claim for compensation under this Act;

(7) the term "containment" means those actions consistent with eventual permanent remedy, taken in

the event of a discharge or release or significant threat of discharge or release of a hazardous substance from a hazardous substance disposal site not in compliance with a permit under subtitle C of the Solid Waste Disposal Act to prevent or minimize the discharge or release of hazardous substances so that they will not migrate to cause substantial danger to present or future public health or safety, or to the environment. The term includes, but is not limited to, such onsite actions as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances, recycling or reuse, diversion, destruction, segregation of reactive wastes, the replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, and any monitoring reasonably required to assure that such actions protect the public health and the environment. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances, unless the President determines that such actions are (A) the most cost effective means of containment for such a hazardous substance disposal site over the expected period of containment,

or (B) will result in less environmental impact than onsite containment at such site;

(8) the term "damages" means damages for econmic loss or personal injury or the loss of natural resources as specified in section 4(a)(2) of this Act;

(9) the term "emergency response" means actions which the President in his discretion determines must be immediately taken in the event of a discharge or release or the significant threat of a discharge or release of a hazardous substance to prevent, minimize, or mitigate damages or substantial danger to the public health or the environment associated with the discharge or release of hazardous substances. The term includes, but is not limited to, (A) security fencing or other measures; provision of alternative water supplies; temporary evacuation and housing of threatened individuals not otherwise provided; and any emergency assistance which may be provided under the Disaster Relief Act of 1974, (B) the transportation, storage, destruction, or treatment and secure disposition offsite of hazardous substances where the President determines that, due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the substances and the potential for human exposure, or the unavailability of onsite methods for preventing or

minimizing the danger, such offsite actions are essential to protect the public health or safety or the environment; and (C) planning, legal, fiscal, economic investigations, engineering or architectural, to determine the feasibility of containment; monitoring and surveys to identify the extent of the discharge or release or threat of discharge or release, the hazardous substances involved, and the danger to public health, safety, or the environment; and studies, investigations, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions to provide for emergency response and containment or to recover the costs of such emergency response and containment.

(10) the term "Fund" means the Hazardous Substance Response Fund established under section 5 of this Act;

(11) the term "groundwater" means water in a saturated zone or stratem beneath the surface of land or water, and any other water used as a source of public drinking water;

(12) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act or section 311(p) of the Clean Water Act;

(13) the term "hazardous substance" means (A) any hazardous substance designated under section 311(b) of the Clean Water Act, (B) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act, (C) any toxic pollutant listed under section 307(a) of the Clean Water Act, (D) any hazardous air pollutant listed under section 112 of the Clean Air Act, (E) any imminently hazardous chemical substance or mixture as that term is defined in section 7 of the Toxic Substances Control Act, (F) any substance or mixture which may be designated under section 3(a)(1) of this Act, and (G) any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring;

(14) the term "natural resources" includes land, fish, wildlife, biota, air, water, and other such re-

sources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(15) in the case of any abandoned onshore or offshore facility or hazardous substance disposal site, the term "owner or operator" shall include the person who owned or operated such facility or site immediately prior to such abandonment or at the time of any discharge, release, or disposal of a hazardous substance;

(16) the term "release" means (A) any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, or dumping, or (B) any other release into the environment which presents or may present a substantial danger to the public health or the environment; and

(17) the term "removal costs" or "costs of removal" means (A) costs incurred under section 311 (c), (d), (e), (b)(6) (C) or (D), or (f)(4) of the Clean Water Act in connection with a hazardous substance, (B) costs incurred under section 504(b) of the Clean Water Act, and (C) other costs of measures taken to prevent, minimize or mitigate damages or substantial danger to the

public health or the environment associated with the discharge, release, or disposal or threatened discharge, release, or disposal of a hazardous substance or to clean up or remove a hazardous substance from the environment.

PROHIBITED RELEASE, NOTICE, PENALTY, RESPONSE

SEC. 3. (a)(1) The President shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 2(13) of this Act, such elements and compounds which, when discharged or released in any quantity into the environment, may present substantial danger to the public health or the environment, and in such regulations may determine those quantities of any hazardous substance the discharge or release of which may be harmful to the public health or the environment.

(2) The discharge of any hazardous substance in violation of section 311(b)(3) of the Clean Water Act or the release or disposal of any hazardous substance, including any release into or upon groundwater, air, land, the navigable waters, or the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to or under the exclusive management authority of the United States (including, resources under the Fishery Conservation and Management Act of 1976), is prohibited.

(3)(A) any person (including, for purposes of this subparagraph, any agency or department of the United States Government) in charge of a vessel or any public vessel owned by the United States or a State or political subdivision thereof or an onshore facility or an offshore facility shall, as soon as such person has knowledge of any discharge, release, or disposal of a hazardous substance from such vessel or facility in violation of paragraph (2) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge, release, or disposal.

(B) Any person—

(i) in charge of a vessel from which a hazardous substance (other than as defined in section 2(13)(G) of this Act) is discharged or released in violation of this subsection into or upon the navigable waters of the United States, adjoining shorelines, or unto or upon the waters of the contiguous zone, or

(ii) in charge of a vessel from which a hazardous substance (other than as defined in section 2(13)(G) of this Act) is discharged or released in violation of this subsection which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the

jurisdiction of the United States at the time of the discharge or release, or

(iii) in charge of an onshore facility or an offshore facility from or at which a hazardous substance (other than as defined in section 2(13)(G) of this Act) is discharged, released, or disposed of in violation of this subsection,

who fails to notify immediately the appropriate agency of the United States Government as soon as such person has knowledge of such release shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

(4)(A) Within one hundred and eighty days after the enactment of this Act, any person who may be subject to liability for a hazardous substance disposal site not in compliance with a permit or accorded interim status under subtitle C of the Solid Waste Disposal Act shall notify the Administrator of the Environmental Protection Agency of the existence of such site, specifying the amount and type of any hazardous substances to be found there, and any known, suspected, or likely discharges or releases of such substances from such site. The Administrator may prescribe the manner and form of the notice and the information to be included. Any such person who knowingly fails to notify the Administrator of the existence of any such site shall, upon conviction, be fined not

more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who fails to provide the notice required by this subsection shall not be entitled to any limitation of liability under this or any other law or to any defenses to liability set out in section 4 of this Act.

(B) After the enactment of this Act, it shall be unlawful for any person required to provide the notification of a hazardous substance disposal site set out in subparagraph (A) of this paragraph knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable any records relating to the site or any hazardous substances contained or deposited therein. Any person who violates this subparagraph shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

(b) The Administrator of the Environmental Protection Agency is authorized to establish and enforce, in accordance with section 3008 of the Solid Waste Disposal Act and sections 308 and 309 of the Clean Water Act, such control or removal requirements as the Administrator deems appropriate to protect the public health and the environment for any hazardous substance disposal site not in compliance with a permit or accorded interim status under subtitle C of the Solid Waste Disposal Act.

(c)(1) Whenever any hazardous substance is discharged released, or disposed of, or there is (A) a substantial threat of

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such a discharge or release into the environment, or (B) a release into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare, the President is authorized to act to remove or arrange for the removal of, or provide for the containment of, such hazardous substance, pollutant, or contaminant at any time (including the removal from any contaminated natural resource), or take any emergency response measure which in the judgment of the President is necessary to protect the public health or the environment, unless the President determines such removal will be done properly by the owner or operator of the vessel or onshore facility or offshore facility or hazardous substance disposal site from which the discharge or release occurs, or other responsible party.

(2) Within one hundred and eighty days after the enactment of this Act, the President shall revise and republish the National Contingency Plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Clean Water act to reflect and effectuate the responsibilities and powers created by this Act in addition to those matters specified in section 311(c)(2) of the Clean Water Act. Such revision shall include a new section of the Plan to be known as the National Hazardous Substance Dis-

posal Site Response Plan, which shall include at a minimum—

(A) methods for discovering and investigating such sites;

(B) methods for evaluating, including analyses of relative cost, and containing any discharges or releases or threats of discharges or realeases from such sites which pose substantial danger to the public health or the environment;

(C) methods and criteria for determining the appropriate extent of emergency response, containment, and other measures authorized by this Act;

(D) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

(E) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

(F) a method for and assignment of responsibility for reporting the existence of such sites which may be located on federally owned or controlled properties and any releases of hazardous substances from such sites.

Following publication of the revised National Contingency Plan, the removal of hazardous substances and actions to

minimize damage from hazardous substance discharges or releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the National Contingency Plan.

(d) Notwithstanding any other provision of law, upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any hazardous substance may present a danger to public health or the environment, the Administrator of the Environmental Protection Agency or the State (or their authorized agents as the case may be), may require any person contributing to such danger to take such actions as may be necessary to ascertain the nature and extent of such danger, or may bring suit in the appropriate district court of the United States to require any such person to take such actions.

LIABILITY FOR DAMAGES AND REMOVAL COSTS

SEC. 4. (a) Except where the person liable under this subsection can prove that a discharge, release, or disposal was caused solely by (i) an act of God or (ii) an act of war, and notwithstanding any other provision or rule of law, the owner or operator of a vessel or an onshore or offshore facility from which a hazardous substance is discharged, released, or disposed of in violation of section 3(a) of this Act, including any release excluded from the definition of "discharge"

under section 311(a)(2) of the Clean Water Act, and any other person who caused or contributed or is causing or contributing to such discharge, release, or disposal, including but not limited to prior owners, lessees, and generators, transporters, or disposers of such hazardous substances, shall be jointly, severally, and strictly liable for—

(1)(A) all costs of removal, containment, or emergency response incurred by the United States Government or a State and

(B) any other costs or expenses incurred by any person to remove a hazardous substance as the terms "remove" or "removal" are defined in section 311(a)(8) of the Clean Water Act; and

(2) all damages for economic loss or loss due to personal injury or loss of natural resources resulting from such a discharge, release, or disposal, including—

(A) any injury to, destruction of, or loss of any real or personal property, including relocation costs;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources;

(F) all out-of-pocket medical expenses, including rehabilitation costs, due to personal injury; and

(G) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agen-

cies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.

(c) Notwithstanding the ordinary requirements for proof of cause in fact or proximate cause of damage, injury, or loss, a person liable under this section for any discharge, release, or disposal of any hazardous substance shall be liable for all medical expenses under subsection (a)(2)(F) of this section if a reasonable person could conclude that such medical expenses and the injury or disease which caused them are reasonably related to such discharge, release or disposal, including, but not limited to, the consideration of statistical correlation and the increase of incidence of such injury or disease in the exposed population above that which is otherwise statistically probable. The inability of a claimant to demonstrate (1) the particular identity of the substance which caused the injury or disease, (2) the particular source of such substance, (3) the pathway of such substance en route to the injured party, or (4) an explanation of the etiology of the substance in the injured party, shall not bar recovery.

(d) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent as any nongovern-

mental entity, including liability for removal costs under section 4 of this Act.

(e) The owner or operator of a vessel shall be liable in accordance with this section and section 311 of the Federal Water Pollution Control Act and as provided under section 8 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

(f) Any generator or transporter of any hazardous substance who knew or had reason to know that a discharge, release, or disposal of such hazardous substance could reasonably be anticipated to result from the transfer of such substance to the owner or operator of the facility which was the source of a discharge, release, or disposal subject to liability under this section shall be deemed to be a person who caused or contributed to such discharge, release, or disposal.

(g) If the owner or operator of a hazardous substance disposal site, who owned or operated the property at the time it was utilized for the disposal of any hazardous substances, and who utilized the site at that time for the disposal of any hazardous substances produced, transported, or disposed of by such owner or operator, fail to properly provide emergency response or containment upon request of the President, such owner or operator shall be liable to the United States for punitive damages in an amount three times the amount of any removal costs expended by the Fund under this Act. Any

moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

RESPONSE FUND ESTABLISHMENT

SEC. 5. (a) There is hereby established in the Treasury of the United States a Hazardous Substance Response Fund, not to exceed $500,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) and (3) of this section being paid into such Fund. The Fund shall be administered by the President and the Secretary of the Treasury, as specified in this section. The Fund may sue and be sued in its own name.

(b) The Fund shall be constituted from—

(1) all fees collected pursuant to subsection (c);

(2) all moneys recovered on behalf of the Fund under section 6;

(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act.

(c)(1) Beginning ninety days after the enactment of this Act, the Secretary of the Treasury shall collect from each manufacturer, importer, or generator of a hazardous substance, as appropriate, a fee on each unit of hazardous substance produced, manufactured, or imported into the United States and each unit of hazardous waste generated. The unit for application of such fees shall be the quantity determined

under section 311(b)(4) of the Clean Water Act, or the minimum quantity required to be reported under section 3002, 3003, 3004, or 3005 of the Solid Waste Disposal Act, or such other unit as the President determines to be appropriate for the measurement of such fee. Any such fees shall be established, or modified pursuant to paragraph (2) of this subsection, at levels adequate to assure, to the extent reasonably possible, that (A) the percentage of the total fees collected from each of the various categories of hazardous substance and modes of discharge or release is equitable, based upon the claims and payments experience of the Fund and projections thereof; (B) complexity in application and collection of such fees is minimized; (C) the costs imposed by such fees are spread as broadly as possible through the economy; and (D) incentives to proper handling and disincentives to improper or illegal handling or disposal of hazardous substances are maximized.

(2) The Secretary of the Treasury, after consulting with appropriate Federal agencies, may promulgate rules and regulations relating to the collection of the fees authorized by paragraph (1) and, from time to time, the modification thereof. Modifications shall become effective on the date specified therein, but no earlier than the ninetieth day following the date the modifying regulation is published in the Federal Register. Any modification of the fee shall be designed to

assure that the Fund is maintained at a level adequate to meet potential obligations and not more than $500,000,000. No regulation that modifies fees, nor any modification of such a regulation, whether or not in effect, may be stayed by any court pending completion of judicial review of that regulation or modification.

(3)(A) Any person who fails to collect or pay fees as required by the regulations promulgated under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid and the interest on those fees at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (d)(2). Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General shall, at the request of the Secretary of the Treasury bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursu-

ant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such required material for the purpose of audit and examination.

(d)(1) The President shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1), in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) If at any time the moneys available in the fund are insufficient to meet the obligations of the Fund, the President shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of these notes or obligations shall be made by the President from moneys in the Fund. These notes or other obligations shall bear interest at a rate determined by the

Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any note or other obligations issued hereunder and, for that purpose, is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States. The authority of the President to issue notes or other obligations under this subsection shall be subject to such amounts as are provided in appropriation Acts.

(f) The Administrator of the Environmental Protection Agency, the Commandant of the Coast Guard, and the Comptroller General shall undertake a study of possible incentives to safer operation of vessels and facilities to reduce the potential of discharges or releases of hazardous substances, and generally of measures to prevent or avoid the occurrence of such discharges or releases. Such study shall address (1) the feasibility of a variable fee for replenishment

of the Fund under subsection (c) of this section which takes into account the likelihood of a discharge or release and the operational experience of individuals or classes, and (2) whether current practices in the insurance and banking industries provide any incentives or disincentives to reducing the potential for discharges or releases of hazardous substances. Such study shall be conducted in consultation with other appropriate Federal and State agencies, the affected industries, and other interested parties. A first report of such study, together with legislative recommendations, if any, shall be submitted to the Congress not later than one year after enactment of this Act and as appropriate thereafter.

USE OF RESPONSE FUND

SEC. 6. (a)(1) The President shall use the money in the Fund for the following purposes:

(A) payment of any claim for costs of removal or damages where the source of the discharge or release of a hazardous substance, or a person liable for such costs of removal or damages, is not known or cannot be identified;

(B) payment of any claim for costs of removal or damages in any case where the claim has not been satisfied in accordance with subsection (b) of this section;

(C) all removal costs or expenses, costs of containment or emergency response, or other costs of car-

rying out the national contingency plan established under section 311(c) of the Clean Water Act or as amended under section 3 of this Act, including removal costs incurred by any person and approved under such national contingency plan;

(D) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under such national contingency plan;

(E) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge or release a hazardous substance;

(F) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge or release of a hazardous substance;

(G) reimbursement to any State for the payment of any claims for costs of removal or damages payable under this Act which such State has paid with funds

under the control of such State pursuant to the national contingency plan or to a delegation under subsection (b) of this section;

(H) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against hazardous substance disposal sites;

(I) subject to such amounts as are provided in appropriation Acts, not to exceed $10,000,000 per fiscal year, the costs of research related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act, to be performed by Federal agencies including the Environmental Protection Agency, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration. Such research shall include, but not be limited to (i) development and refinement of protocols to determine the type and extent of short and long term injury or loss of natural resources, (ii) development and refinement of the best available procedures to identify the value of injured or lost resources, (iii) laboratory or field research on the effects of hazardous substances on living and nonliving resources that will provide additional scientific basis for damage assessments, and (iv) research on minimizing the damage caused by spill control, dispersal and re-

moval operations. Responsibility under the preceding sentence shall be assigned in accordance with the assessment responsibilities established under subsection (e)(2) of this section and officials responsible for such assessments shall be consulted before proposal of any research plan or appropriation request under the preceding sentence;

(J) subject to such amounts as are provided in appropriation Acts, the costs of research to develop mobile or portable onsite technology for response at hazardous substance disposal sites, technology for onsite treatment, or containment of release into groundwater, or other technology for the containment, treatment, or secure disposition of hazardous substances;

(K) subject to such amounts as are provided in appropriation Acts, the administrative and personnel costs of administering the Fund and this Act.

(2)(A) The President shall not use any money in the Fund for any removal costs associated with a discharge or release of a hazardous substance from a hazardous waste disposal site not in compliance with a permit under subtitle C of the Solid Waste Disposal Act, other than the costs of emergency response, unless the State in which the site is located first provides adequate assurance that (i) such State will use

such money to provide for or otherwise assure any and all future maintenance of containment measures for the expected life of the containment, (ii) such State will assure the availability of a hazardous waste disposal facility acceptable to the Administrator for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances, (iii) such State will bear—per centum of such costs of removal; and (iv) the Fund will recover at least 50 per centum or such greater amount as the President shall determine appropriate, of any sums expended on containment at a hazardous substance disposal site owned at the time of any disposal by a State or a political subdivision of a State.

(B) The President shall identify—

(i) national priorities for response based on methods and criteria for determining such response priorities, including the role of the States in determining State priorities for response, and in assisting the President in the determination of national priorities for response, taking into account, to the extent possible, the significance of the threat to public health, safety, and the environment; the population at risk; the hazard potential of the hazardous substances at such sites; the potential for contamination of drinking water supplies; the potential for direct human contact; the potential for destruction of sensitive ecosystems; State preparedness

to assume State costs and responsibilities; and other appropriate factors; and

(ii) a system, including the use of contracts, whereby the State or States affected by a discharge or release of hazardous substances from a hazardous waste disposal site may act where necessary to provide emergency response and containment and may be reimbursed for the reasonable costs incurred for such response and containment from the Fund.

(b)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for costs of

removal or damages resulting from the discharge or release of a hazardous substance under this Act.

(B) Whenever the President receives information from any person alleging they have incurred costs of removal or damages resulting from the discharge or release of a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under section 4 of this Act, he shall notify the owner, operator, and guarantor of such vessel or onshore or offshore facility of such allegation. Such owner or operator or guarantor, may, within five days after receiving such notification or presentation of any claim by a claimant, deny such allegations, or deny liability for damages for any of the reasons set forth in subsection (a) of section 4 of this Act.

(C) The owner and operator of any vessel or onshore or offshore facility from which a hazardous substance has been discharged or released shall provide notice to all potential injured parties.

(D) All claims shall be presented in the first instance to the owner, operator, or guarantor of the vessel, or onshore or offshore facility from which a hazardous substance has been discharged or released, and to any other person liable under section 4. In any case where the claim has not been satisfied in accordance with this paragraph, the claimant may elect to commence an action in court against such owner, operator,

or guarantor or other person or to present the claim for payment from the Fund under this section.

(E) No claim may be presented nor may an action be commenced for damages under this Act unless that claim is presented or action commenced within six years from the date of the discovery of the loss.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the costs of removal or damages from the person responsible or liable for such discharge or release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs of removal resulting from a discharge or release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal such claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the fund to any claimant pursuant to this Act, and, without regard to only limitation of liability, all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner, operator, or guarantor, or against any other person

who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs of removal for which the compensation was paid.

(d) The Fund shall not be available to pay any claim for costs of removal or damages to the extent the discharge or release or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(e)(1)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Director of the Fish and Wildlife Service, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge or release of a hazardous substance, for the purpose of section 4(a)(2) (C) and (D) of this Act, section 6(a)(1)(F) of this Act, and section 311(f) (4) and (5) of the Clean Water Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall

identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(2) In accordance with such regulations, damages for injury to, destruction of, or loss of natural resources resulting from a discharge or release of a hazardous substance, for the purposes of section 4(a)(2) (C) and (D) and section 6(a)(1)(F) of this Act and section 311(f) (4) and (5) of the Clean Water Act, shall be assessed by (A) the Director of the Fish and Wildlife Service for living natural resources and their supporting ecosystems over which such Service has management or conservation authority, (B) the Administrator of the National Oceanic and Atmospheric Administration for other natural resources in the marine environment beyond the baseline of the territorial sea, and (C) the Administrator of the Environmental Protection Agency for all other natural resources. Such officials shall act for the President as trustee under section 4(b) of this Act and section 311(f)(5) of the Clean Water Act.

(3) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the

purposes of section 4(a)(2) (C) and (D) and section 6(a)(1)(F) of this Act and section 311(f) (4) and (5) of the Clean Water Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 4(b) of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(f) The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

FINANCIAL RESPONSIBILITY

SEC. 7. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry hazardous substances as cargo) using any port or place in the United States or the navigable waters or any offshore facility shall establish and maintain in accordance with section 311(p) of the Federal Water Pollution Con-

trol Act evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, $5,000,000, whichever is greater). The provisions of paragraphs (3), (4), (5), and (6) of such section 311(p) shall apply to any vessel, or the owner or operator thereof, subject to this section. This subsection shall take effect one hundred and eighty days after the enactment of this Act.

(2) Any vessel subject to the requirement of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any hazardous substances carried as cargo.

(b)(1) The owner or operator of any onshore or offshore facility shall establish and maintain evidence of financial responsibility consistent with the degree and duration of risks associated with the transportation, treatment, storage, or disposal of hazardous substances. Such evidence of financial responsibility shall be established according to regulations prescribed by the President and comparable to that required under section 311(p) of the Federal Water Pollution Control Act. This subsection shall take effect one hundred and eighty days after enactment of this Act.

(2) The owner or operator of any facility subject to this subsection who fails to comply with this subsection or the

regulations prescribed thereunder shall be subject to a fine of not more than $10,000 per day of violation.

STATE LAWS AND PROGRAMS

SEC. 8. Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the discharge of hazardous substances within such State.

LITIGATION AND CONFORMING AMENDMENTS

SEC. 9. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages.

(b) Except as provided in subsection (a) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or release or damages occurred, or in which the defendant resides, may be found, or does business.

(c) No provision of this Act shall be deemed or held to moot any litigation concerning any discharge, release, or disposal of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(d) Section 311 of the Clean Water Act is amended as follows:

(1) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 5 of the Environmental Emergency Response Act, as appropriate,".

(2) Subsection (f) is amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against any guarantor of an owner's or operator's liability under the Environmental Emergency Response Act,".

(3) Subsection (g) is amended, by inserting in the last sentence, after the word "party" the words "or against any guarantor of an owner's or operator's liability under the Environmental Emergency Response Act".

(4) One half of any sums appropriated prior to the enactment of this Act under subsection (k) of such section 311 and all sums appropriated under section

504(b) of the Clean Water Act shall be transferred to the Fund established under section 5 of this Act.

EXPIRATION

SEC. 10. The authority to establish and collect fees pursuant to section 5 of this act and the authority to obligate funds pursuant to section 6 of this Act shall expire October 1, 1986.

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[STAFF WORKING PAPER]

FEBRUARY 1, 1980

Calendar No.

96TH CONGRESS
2D SESSION

S. 1480

[Report No. 96–]

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

IN THE SENATE OF THE UNITED STATES

[Omit the part struck through and insert the part printed in italic]

A BILL

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Environmental Emergency Response Act".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) the terms "discharge", "vessel", "public vessel", "United States", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", and "offshore facility", shall have the meaning provided in section 311(a) of the Clean Water Act;

(2) the terms "State", "person", "navigable waters", and "territorial seas" shall have the meaning provided in section 502 of the Clean Water Act;

(3) the terms "disposal", "hazardous waste", and "hazardous waste generation" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act and the terms "generator" and "transporter" shall have the meaning apparent under subtitle C of the Solid Waste Disposal Act;

(4) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(5) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of a hazardous substance;

(6) the term "claimant" means any person who presents a claim for compensation under this Act;

(7) the term ~~"containment"~~ *"remedy"* means those actions consistent with eventual permanent remedy, taken in the event of a discharge or release or significant threat of discharge or release of a hazardous substance from a hazardous substance disposal site not in compliance with a permit under subtitle C of the Solid Waste Disposal Act to prevent or minimize the discharge or release of hazardous substances so that they will not migrate to cause substantial danger to present or future public health or ~~safety,~~ *welfare,* or to the environment. The term includes, but is not limited to, such onsite actions as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances, recycling or reuse, diversion, destruction, segregation of reactive wastes, the *repair and* replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, and any monitoring reasonably required to assure that such actions protect the public health *and welfare* and the environment. *The term includes the costs of permanent relocation of residences, businesses, and community facilities where the President determines that, alone or in combi-*

nation with other measures, such relocation is more cost effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or may otherwise be necessary to protect the public health or welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances, unless the President determines that such actions are ~~(A) the most cost effective means of containment for such a hazardous substance disposal site over the expected period of containment, or (B)~~ *(A) are more cost-efficient than other remedies, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those hazardous substances at the affected site; and (C)* will result in less environmental impact than onsite containment at such site;

(8) the term "damages" means damages for economic loss or personal injury or the loss of natural resources as specified in section 4(a)(2) of this Act;

~~(9) the term "emergency response" means actions which the President in his discretion determines must be immediately taken in the event of a discharge or re-~~

lease or the significant threat of a discharge or release of a hazardous substance to prevent, minimize, or mitigate damages or substantial danger to the public health or the environment associated with the discharge or release of hazardous substances. The term includes, but is not limited to, (A) security fencing or other measures; provision of alternative water supplies; temporary evacuation and housing of threatened individuals not otherwise provided; and any emergency assistance which may be provided under the Disaster Relief Act of 1974; (B) the transportation, storage, destruction, or treatment and secure disposition offsite of hazardous substances where the President determines that, due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the substances and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger, such offsite actions are essential to protect the public health or safety or the environment; and (C) planning, legal, fiscal, economic investigations, engineering or architectural, to determine the feasibility of containment; monitoring and surveys to identify the extent of the discharge or release or threat of discharge or release, the hazardous substances involved, and the danger to public health,

~~safety, or the environment; and studies, investigations, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions to provide for emergency response and containment or to recover the costs of such emergency response and containment.~~

(9) in addition to the meaning under section 311(a) of the Clean Water Act, the term "facility" includes any facility on submerged land and any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located;

(10) the term "Fund" means the Hazardous Substance Response Fund established under section 5 of this Act;

(11) the term "groundwater" means water in a saturated zone or stratem beneath the surface of land or water, and any other water used as a source of public drinking water;

(12) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act or section 311(p) of the Clean Water Act;

(13) the term "hazardous substance" means (A) any hazardous substance designated under section

311(b) of the Clean Water Act, (B) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act, (C) any toxic pollutant listed under section 307(a) of the Clean Water Act, (D) any hazardous air pollutant listed under section 112 of the Clean Air Act, (E) any imminently hazardous chemical substance or mixture as that term is defined in section 7 of the Toxic Substances Control Act, (F) any substance or mixture which may be designated under section 3(a)(1) of this Act, and (G) any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. *The term does not include petroleum, including crude oil and fractions thereof which are not otherwise specifically listed or designated as hazardous substances under subparagraphs (A) through (F) of this paragraph;*

(14) the term "natural resources" includes land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(15)*(A)* in the case of any abandoned onshore or offshore facility or ~~hazardous substance disposal~~ site, the term "owner or operator" shall include the person who owned or operated *or otherwise controlled activities at* such facility or site immediately prior to such abandonment or at the time of any discharge, release, or disposal of a hazardous substance;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the generator of such hazardous substance shall not be considered to have caused or contributed to any discharge or release during such transportation which resulted solely from circumstances or conditions beyond his control;

(16) the term "release" means—

(A) any spilling, leaking, pumping, pouring, emitting, emptying, discharging, *injecting*, escaping, leaching, or dumping, or

(B) any other release into the environment which presents or may present a substantial danger to the public health or the ~~environment; and~~ *environment. Such term shall not include—*

(i) natural gas or liquefied natural gas to the extent releases of such substances are provided for under the Pipeline Safety Act;

(ii) any release involving the use of a consumer product, with respect to persons voluntarily exposing themselves to substances in such product;

(iii) the normal field application of fertilizer; or

(iv) emissions from the exhaust of a motor vehicle;

(17)*(A)* the term "removal costs" or "costs of removal" means (i) costs incurred under section 311 (c), (d), (e), (b)(6) (C) or (D), or (f)(4) of the Clean Water Act in connection with a hazardous substance *(as defined in this Act)*, (ii) costs incurred under section 504(b) of the Clean Water Act, and (iii) other costs of

measures taken to prevent, minimize or mitigate damages or substantial danger to the public health or the environment associated with the discharge, release, or disposal or threatened discharge, release, or disposal of a hazardous substance or to clean up or remove a hazardous substance from the environment, *including the costs of remedy; and*

(B) as part of the meaning of "remove" and "removal" under section 311(a) of the Clean Water Act and subparagraph (A) of this paragraph, such terms include, but are not limited to, security fencing or other measures; provision of alternative water supplies; temporary evacuation and housing of threatened individuals not otherwise provided; and any emergency assistance which may be provided under the Disaster Relief Act of 1974.

~~PROHIBITED~~ RELEASE, NOTICE, PENALTY, RESPONSE

SEC. 3. (a)(1) *The Congress hereby finds and declares that the manufacture, use, transportation, treatment, storage, disposal, and release of hazardous substances are ultrahazardous activities.*

(2) The President shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 2(13) of this Act, such elements and compounds which, when dis-

charged or released in any quantity into the environment, may present substantial danger to the public health or the environment, and in such regulations may determine those quantities of any hazardous substance the discharge or release of which may be harmful to the public health or the environment.

~~(2) The discharge of any hazardous substance in violation of section 311(b)(3) of the Clean Water Act or the release or disposal of any hazardous substance, including any release into or upon groundwater, air, land, the navigable waters, or the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to or under the exclusive management authority of the United States (including, resources under the Fishery Conservation and Management Act of 1976), is prohibited.~~

(3)(A) Any person (including, for purposes of this subparagraph, any agency or department of the United States Government) in charge of a vessel or any public vessel owned by the United States or a State or political subdivision thereof or an onshore facility or an offshore facility shall, as soon as such person has knowledge of any discharge, release, or disposal of a hazardous substance from such vessel or facility ~~in violation of paragraph (2) of this subsection,~~ *other than in compliance with a permit issued under section 402 of the Clean Water Act, subtitle C of the Solid Waste Disposal*

Act, the Clean Air Act, title I of the Marine Protection, Research, and Sanctuaries Act, or the Safe Drinking Water Act, immediately notify the appropriate agency of the United States Government of such discharge, release, or disposal.

(B) Any person—

(i) in charge of a vessel from which a hazardous substance (other than as defined in section 2(13)(G) of this Act) is discharged or released ~~in violation of this subsection~~ *other than in compliance with a permit issued under section 402 of the Clean Water Act, subtitle C of the Solid Waste Disposal Act, the Clean Air Act, title I of the Marine Protection, Research, and Sanctuaries Act, or the Safe Drinking Water Act,* into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(ii) in charge of a vessel from which a hazardous substance (other than as defined in section 2(13)(G) of this Act) is discharged or released ~~in violation of this subsection~~ *other than in compliance with a permit issued under section 402 of the Clean Water Act, subtitle C of the Solid Waste Disposal Act, the Clean Air Act, title I of the Marine Protection, Research, and Sanctuaries Act, or the Safe Drinking Water Act,* which may affect natural resources belonging to, ap-

pertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the discharge or release, or

(iii) in charge of an onshore facility or an offshore facility from or at which a hazardous substance (other than as defined in section 2(13)(G) of this Act) is discharged, released, or disposed of ~~in violation of this subsection,~~ *other than in compliance with a permit issued under section 402 of the Clean Water Act, subtitle C of the Solid Waste Disposal Act, the Clean Air Act, title I of the Marine Protection, Research, and Sanctuaries Act, or the Safe Drinking Water Act*

who fails to notify immediately the appropriate agency of the United States Government as soon as such person has knowledge of such release shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

(4)(A) Within one hundred and eighty days after the enactment of this Act, any person who *owns or operates, or has reason to believe that he or she* may be subject to liability for, a ~~hazardous substance disposal site~~ *facility or site at which hazardous substances are stored or disposed of which is* not in

compliance with a permit or accorded interim status under subtitle C of the Solid Waste Disposal Act shall notify the Administrator of the Environmental Protection Agency of the existence of such site, specifying the amount and type of any hazardous substances to be found there, and any known, suspected, or likely discharges or releases of such substances from such site. The Administrator may prescribe the manner and form of the notice and the information to be included. Any such person who knowingly fails to notify the Administrator of the existence of any such site shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who fails to provide the notice required by this subsection shall not be entitled to any limitation of liability under this or any other law or to any defenses to liability set out in section 4 of this Act.

(B) After the enactment of this Act, it shall be unlawful for any person required to provide the notification of a hazardous substance disposal site set out in subparagraph (A) of this paragraph knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable ~~any records relating to the site or any hazardous substances~~ *or falsify any records relating to the location, title, or condition of the site or the identity, characteristics, quantity, origin, or condition (including containerization and previous*

treatment) of any hazardous substances contained or deposited therein. Any person who violates this subparagraph shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

(C) Any deed or conveyance for any facility or site at which any hazardous substance has been disposed of or stored, or which has been contaminated by any release of a hazardous substance, shall disclose upon its face the identity, quantity, location, condition, and circumstances of such disposal, storage, or contamination, to the full extent known to or ascertainable by the owner or other conveyer of such facility or site. Such deed or conveyance shall also contain such restrictive convenants limiting the subsequent use or modification of such facility or site as may be necessary to protect the public health or welfare. The disclosures and restrictive covenants in such deed or conveyance shall be a matter of public record in the registry of deeds or similar institution for the county in which said facility or site is located. Any person who knowingly violates the requirements of this subparagraph shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person shall be held liable under section 4 of this Act as an owner of such facility or site in the case of any discharge, release, or disposal of a hazardous substance from such facility or site.

(b) The Administrator of the Environmental Protection Agency is authorized to establish and enforce, in accordance with section 3008 of the Solid Waste Disposal Act and sections 308 and 309 of the Clean Water Act, such control or removal requirements as the Administrator deems appropriate to protect the public health and the environment for any ~~hazardous substance disposal site~~ *facility or site at which hazardous substances are stored or disposed of which is* not in compliance with a permit or accorded interim status under subtitle C of the Solid Waste Disposal Act.

(c)(1) Whenever any hazardous substance is discharged, released, or disposed of, or there is (A) a substantial threat of such a discharge or release into the environment, or (B) a release *or substantial threat of release* into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare, the President is authorized to act to remove or arrange for the removal of, or provide for the containment of, such hazardous substance, pollutant, or contaminant at any time (including the removal from any contaminated natural resource), or take any emergency response measure which in the judgment of the President is necessary to protect the public health or the environment, unless the President determines such removal will be done properly by the owner or operator of the vessel or onshore facility or offshore facility ~~or hazardous substance~~

~~disposal site~~ from which the discharge or release occurs, or other responsible party.

(2) Within one hundred and eighty days after the enactment of this Act, the President shall revise and republish the National Contingency Plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Clean Water Act to reflect and effectuate the responsibilities and powers created by this Act in addition to those matters specified in section 311(c)(2) of the Clean Water Act. Such revision shall include a new section of the Plan to be known as the National Hazardous Substance Disposal Site Response Plan, which shall include at a minimum—

(A) methods for discovering and investigating such sites;

(B) methods for evaluating, including analyses of relative cost, and containing any discharges or releases or threats of discharges or releases from such sites which pose substantial danger to the public health or the environment;

(C) methods and criteria for determining the appropriate extent of ~~emergency response,~~ *removal, remedy,* ~~containment,~~ and other measures authorized by this Act;

(D) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

(E) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

(F) a method for and assignment of responsibility for reporting the existence of such sites which may be located on federally owned or controlled properties and any releases of hazardous substances from such sites.

Following publication of the revised National Contingency Plan, the removal of hazardous substances and actions to minimize damage from hazardous substance discharges or releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the National Contingency Plan.

(d) Notwithstanding any other provision of law, upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any hazardous substance may present a danger to public health or the environment, the Administrator of the Environmental Protection Agency or the State (or their authorized agents as the case may be), may require any person contributing to such danger to take

such actions as may be necessary to ascertain the nature and extent of such danger, or may bring suit in the appropriate district court of the United States to require any such person to take such actions.

LIABILITY FOR DAMAGES AND REMOVAL COSTS

SEC. 4. (a) Except where the person liable under this subsection can prove that a discharge, release, or disposal was caused solely by (i) an act of God or (ii) an act of war, and notwithstanding any other provision or rule of law, the owner or operator of a vessel or an onshore or offshore facility from which a hazardous substance is discharged, released, or disposed of ~~in violation of section 3(a) of this Act,~~ including any release excluded from the definition of "discharge" under section 311(a)(2) of the Clean Water Act, *or from which any pollutant or contaminant is released resulting in action under section 3(c)(1) of this Act,* and any other person who caused or contributed or is causing or contributing to such discharge, release, or disposal, ~~including but not limited to prior owners, lessees, and generators, transporters, or disposers of such hazardous substances,~~ shall be jointly, severally, and strictly liable for—

(1)(A) all costs of removal, containment, or emergency response incurred by the United States Government or a State, and

(B) any other costs or expenses incurred by any person to remove a hazardous substance as the terms "remove" or "removal" are defined in section 311(a)(8) of the Clean Water Act; and

(2) all damages for economic loss or loss due to personal injury or loss of natural resources resulting from such a discharge, release, or disposal, including—

(A) any injury to, destruction of, or loss of any real or personal property, including relocation costs;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from *personal injury or from* injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources;

(F) all out-of-pocket medical expenses, including rehabilitation costs *or burial expenses,* due to personal injury; and

(G) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.

~~(c) Notwithstanding the ordinary requirements for proof of cause in fact or proximate cause of damage, injury, or loss, a person liable under this section for any discharge, release, or disposal of any hazardous substance shall be liable for all medical expenses under subsection (a)(2)(F) of this section if a~~

~~reasonable person could conclude that such medical expenses and the injury or disease which caused them are reasonably related to such discharge, release or disposal, including, but not limited to, the consideration of statistical correlation and the increase of incidence of such injury or disease in the exposed population above that which is otherwise statistically probable. The inability of a claimant to demonstrate (1) the particular identity of the substance which caused the injury or disease, (2) the particular source of such substance, (3) the pathway of such substance en route to the injured party, or (4) an explanation of the etiology of the substance in the injured party, shall not bar recovery.~~

(c)(1)(A) In any proceeding involving a claim for medical expenses alleged to have resulted from a discharge, release, or disposal of a hazardous substance, the trier of fact shall consider as relevant and material (i) information as to an increase of incidence of such injury or disease in the exposed population above that which is otherwise probable, (ii) epidemiological studies (without regard to the size of the sample), (iii) animal studies, (iv) tissue culture studies, (v) microorganism culture studies, and (vi) other laboratory or toxicologic studies tending to establish the likelihood that a release of such substance caused or contributed to an injury or disease of the type or class complained of.

(B) Uncertainty of medical or scientific evidence with regard to establishing—

(i) the specific substance which caused the injury or disease,

(ii) the particular source of such substance,

(iii) the pathway of such substance en route to the injured party, or

(iv) the etiology of the substance in the injured party, shall bear only on the weight of said evidence, as determined by the trier of fact.

(2)(A) Notwithstanding the ordinary requirements for proof of cause in fact or proximate cause of damage, injury, or loss, a discharge, release or disposal shall be presumed to have caused the injury or disease complained of and the associated medical expenses if a plaintiff seeking damages under this subsection offers evidence tending to establish a reasonable likelihood that (i) the injured or diseased party was exposed to a hazardous substance found in a discharge, release, or disposal for which the defendant may be held liable under this section, and (ii) such a hazardous substance or such a discharge, release or disposal could have caused the injury or disease of the class or type for which medical expenses are sought.

(B) The person or persons liable for said discharge, release or disposal shall be responsible for all medical expenses

under (a)(2)(F) of this section unless such person establishes that there is no reasonable likelihood that the injury or disease for which medical expenses are sought resulted from said discharge, release, or disposal.

(d) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent as any nongovernmental entity, including liability for removal costs under section 4 of this Act.

(e) The owner or operator of a vessel shall be liable in accordance with this section and section 311 of the Federal Water Pollution Control Act and as provided under section 8 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

~~(f) Any generator or transporter of any hazardous substance who knew or had reason to know that a discharge, release, or disposal of such hazardous substance could reasonably be anticipated to result from the transfer of such substance to the owner or operator of the facility which was the source of a discharge, release, or disposal subject to liability under this section shall be deemed to be a person who caused or contributed to such discharge, release, or disposal.~~

(f)(1) Persons who caused or contributed to or are causing or contributing to a discharge, release, or disposal may

include, but are not limited to, prior owners, operators, or lessees of a facility and generators, shippers, transporters, or disposers of any hazardous substance or persons who have treated or handled such substance.

(2) Any generator, shipper, transporter, or disposer of a hazardous substance who (A) failed to exercise due care in the selection or instruction of a contractor or other independent party for the transportation, storage, treatment, or disposal of such substance, or to take reasonable means to assure or verify that such contractor or other independent party did in fact transport, store, treat, or dispose of such substance so as to minimize the risk of release or potential damage; or (B) failed to label, load, or pack such substance so as to minimize the risk of release or potential damage; or (C) failed to equip or maintain the container or facility in which such substance is transported, stored, treated, or disposed of so as to minimize the risk of release or potential damage; or (D) failed to provide a transporter, storer, treater, or disposer with adequate information as to the identity, quantity, composition, condition, or hazardous characteristics of such substance; or (E) otherwise knew or had reason to know that a discharge, release, or disposal of a hazardous substance could reasonably be anticipated to result from the actions or omissions of such person, shall be deemed to be a person who caused or

contributed to a discharge, release, or disposal of such substance.

(3) In any case where a person held liable under this section as a person who caused or contributed to a discharge, release, or disposal of a hazardous substance can demonstrate by a preponderance of the evidence that (A) the contribution of such person can be distinguished or apportioned and (B) such contribution was not a significant factor in causing or contributing to the discharge, release, or disposal or the damages resulting therefrom, the liability of such person may, in the discretion of the trier of fact, be limited to that portion of the release or damages to which such person contributed.

(4) In any action brought under this section or section 6(c) of this Act, a person held jointly and severally liable with one or more other persons is entitled to seek contribution from such persons to the extent of the proportionate liability of such persons. In any case where a person held liable under this section alleges that the discharge, release, or disposal or the consequent damages are solely or in part due to the act or omission of a third party, such person retains all rights against such third party and shall be entitled to join such third party as a defendant in an action under this section or section 6(c) of this Act.

(g) If the owner or operator of a ~~hazardous substance disposal site,~~ *facility or site at which hazardous substances*

are stored or disposed of, who owned or operated the property at the time it was utilized for the *storage or* disposal of any hazardous substances, and who utilized the site at that time for the *storage or* disposal of any hazardous substances produced, transported, *stored,* or disposed of by such owner or operator, fail to properly provide ~~emergency response or containment~~ *removal or remedy* upon request of the President, such owner or operator shall be liable to the United States for punitive damages in an amount three times the amount of any removal costs expended by the Fund under this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(h) No person shall be liable under this Act for damages as a result of acts taken or omitted in anticipation of, in preparation for, or in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan or at the direction of an on-scene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the possibility thereof. This paragraph shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(i) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer from the owner or operator of a facility, or from any person who may be liable for a release under this section, to any other person the liability imposed under this section.

(j) Post closure liability.—**[COPY TO COME]**

RESPONSE FUND ESTABLISHMENT

SEC. 5. (a) There is hereby established in the Treasury of the United States a Hazardous Substance Response Fund, not to exceed $500,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b) (2) and (3) of this section being paid into such Fund. The Fund shall be administered by the President and the Secretary of the Treasury, as specified in this section. The Fund may sue and be sued in its own name.

(b) The Fund shall be constituted from—

(1) all fees collected pursuant to subsection (c);

(2) all moneys recovered on behalf of the Fund under section 6;

(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act.

(c)(1) Beginning ninety days after the enactment of this Act, the Secretary of the Treasury shall collect ~~from each manufacturer, importer, or generator of a hazardous sub-~~

~~stance, as appropriate,~~ a fee ~~on each unit of hazardous sub-~~
~~stance produced, manufactured, or imported into the United~~
~~States and each unit of hazardous waste generated. The unit~~
~~for application of such fees shall be the quantity determined~~
~~under section 311(b)(4) of the Clean Water Act, or the mini-~~
~~mum quantity required to be reported under section 3002,~~
~~3003, 3004, or 3005 of the Solid Waste Disposal Act, or~~
~~such other unit as the President determines to be appropriate~~
~~for the measurement of such fee. Any such fees shall be es-~~
~~tablished, or modified pursuant to paragraph (2) of this sub-~~
~~section, at levels adequate to assure, to the extent reasonably~~
~~possible, that (A) the percentage of the total fees collected~~
~~from each of the various categories of hazardous substance~~
~~and modes of discharge or release is equitable, based upon~~
~~the claims and payments experience of the Fund and projec-~~
~~tions thereof; (B) complexity in application and collection of~~
~~such fees is minimized; (C) the costs imposed by such fees are~~
~~spread as broadly as possible through the economy; and (D)~~
~~incentives to proper handling and disincentives to improper~~
~~or illegal handling or disposal of hazardous substances are~~
~~maximized.~~ [COPY TO COME]

(2) The Secretary of the Treasury, after consulting with appropriate Federal agencies, may promulgate rules and regulations relating to the collection of the fees authorized by paragraph (1) and, from time to time, the modification there-

of. Modifications shall become effective on the date specified therein, but no earlier than the ninetieth day following the date the modifying regulation is published in the Federal Register. Any modification of the fee shall be designed to assure that the Fund is maintained at a level adequate to meet potential obligations and not more than $500,000,000. *In no fiscal year shall fees in excess of $1,000,000,000 be collected.* No regulation that modifies fees, nor any modification of such a regulation, whether or not in effect, may be stayed by any court pending completion of judicial review of that regulation or modification.

(3)(A) Any person who fails to collect or pay fees as required by the regulations promulgated under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid and the interest on those fees at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (d)(2). Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General shall, at the request of the Secretary of the Treasury bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated

under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such required material for the purpose of audit and examination.

(d)(1) The President shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1), in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the President shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the inter-

est rates and maturities and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of these notes or obligations shall be made by the President from moneys in the Fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any note or other obligations issued hereunder and, for that purpose, is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States. The authority of the President to issue notes or other obligations under this subsection shall be subject to such amounts as are provided in appropriation Acts.

(f) The Administrator of the Environmental Protection ~~Agency,~~ *Agency and* the Commandant of the Coast Guard~~, and the Comptroller General~~ shall undertake a study

of possible incentives to safer operation of vessels and facilities to reduce the potential of discharges or releases of hazardous substances, and generally of measures to prevent or avoid the occurrence of such discharges or releases. Such study shall address (1) the feasibility of a variable fee for replenishment of the Fund under subsection (c) of this section which takes into account the likelihood of a discharge or release and the operational experience of individuals or classes, and (2) whether current practices in the insurance and banking industries provide any incentives or disincentives to reducing the potential for discharges or releases of hazardous substances. Such study shall be conducted in consultation with other appropriate Federal and State agencies, the affected industries, and other interested parties. A first report of such study, together with legislative recommendations, if any, shall be submitted to the Congress not later than one year after enactment of this Act and as appropriate thereafter.

USE OF RESPONSE FUND

SEC. 6. (a)(1) The President shall use the money in the Fund for the following purposes:

(A) payment of any claim for costs of removal or damages *under section 4(a)(2) (C), (E), or (F)* where the source of the discharge or release of a hazardous

substance, or a person liable for such costs of removal or damages, is not known or cannot be identified;

(B) payment of any claim for costs of removal or damages *under section 4(a)(2) (C), (E), or (F)* in any case where the claim has not been satisfied in accordance with subsection (b) of this section;

(C) all removal costs or expenses, costs of ~~containment or emergency response,~~ *remedy,* or other costs of carrying out the national contingency plan established under section 311(c) of the Clean Water Act or as amended under section 3 of this Act, including removal costs incurred by any person and approved under such national contingency plan;

(D) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under such national contingency plan;

(E) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge or release of a hazardous substance;

(F) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge or release of a hazardous substance;

(G) reimbursement to any State for the payment of any claims for costs of removal or damages *under section 4(a)(2) (C), (E), or (F)* payable under this Act which such State has paid with funds under the control of such State pursuant to the national contingency plan or to a delegation under subsection (b) of this section;

(H) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against hazardous substance disposal sites;

(I) subject to such amounts as are provided in appropriation Acts, not to exceed $10,000,000 per fiscal year, the costs of research related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act, to be performed by Federal agencies including the Environmental Protection Agency, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration. Such research shall include, but not be limited to (i) development and refinement of protocols to determine the type and extent

of short and long term injury or loss of natural resources, (ii) development and refinement of the best available procedures to identify the value of injured or lost *natural* resources, (iii) laboratory or field research on the effects of hazardous substances on living and nonliving resources that will provide additional scientific basis for damage assessments, and (iv) research on minimizing the damage caused by spill control, dispersal and removal operations. Responsibility under the preceding sentence shall be assigned in accordance with the assessment responsibilities established under subsection (e)(2) of this section and officials responsible for such assessments shall be consulted before proposal of any research plan or appropriation request under the preceding sentence;

(J) subject to such amounts as are provided in appropriation Acts, the costs of research to develop mobile or portable onsite technology for response at ~~hazardous substance disposal sites,~~ *facilities or sites at which hazardous substances are present,* technology for onsite treatment, or containment of release into groundwater, or other technology for the containment, treatment, or secure disposition of hazardous substances;

(K) subject to such amounts as are provided in appropriation Acts, the administrative and personnel costs of administering the Fund and this ~~Act.~~ *Act;*

(L) the costs of epidemiologic studies, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances are suffering from long-latency diseases;

(M) the costs of expert witnesses employed by claimants in actions to recover damages under section 4 of this Act, to the extent authorized by the court, and the costs of neutral expert panels which may be established in such actions by the court, sua sponte or on the motion of any party.

(2)(A) The President shall not use any money in the Fund for ~~any removal~~ *the* costs *of any remedy* associated with a discharge or release of a hazardous substance ~~from a hazardous waste disposal site not in compliance with a permit under subtitle C of the Solid Waste Disposal Act, other than the costs of emergency response,~~ unless the State in which the site is located first provides adequate assurance that (i) such State will use such money to provide for or otherwise assure any and all future maintenance of contain-

ment measures for the expected life of the ~~containment,~~ *remedy,* (ii) such State will assure the availability of a hazardous waste disposal facility acceptable to the Administrator for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances, (iii) such State will bear—per centum of such costs of removal; and (iv) the Fund will recover at least 50 per centum or such greater amount as the President shall determine appropriate, of any sums expended on ~~containment~~ *removal or remedy* at a hazardous substance disposal site owned at the time of any disposal by a State or a political subdivision of a State.

(B) The President shall identify—

(i) national priorities for response based on methods and criteria for determining such response priorities, including the role of the States in determining State priorities for response, and in assisting the President in the determination of national priorities for response, taking into account, to the extent possible, the significance of the threat to public health, safety, and the environment; the population at risk; the hazard potential of the hazardous substances at such sites; the potential for contamination of drinking water supplies; the potential for direct human contact; the potential for destruction of sensitive ecosystems; State preparedness

to assume State costs and responsibilities; and other appropriate factors; and

(ii) a system, including the use of contracts *and certification of State programs,* whereby the State or States affected by a discharge or release of hazardous substances ~~from a hazardous waste disposal site~~ may act where necessary to provide ~~emergency response and containment~~ *removal and remedy in accordance with the priorities established under clause (i)* and may be reimbursed for the reasonable costs incurred for such ~~response and containment~~ *measures* from the Fund.

(3)(A) Payment of any claim for out-of-pocket medical expenses under thi section shall be limited to those incurred within six years after the initial exposure to u hazardous substance in a discharge, release, or disposal.

(B) Payment of any claim for lost wages or other personal income under section 4(a)(2)(E) of this Act shall be limited to 100 per centum of the actual amount lost in the first year following the commencement of such loss and 80 per centum of the actual amount lost in the second year following the commencement of such loss.

(b)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of

this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for costs of removal or damages resulting from the discharge or release of a hazardous substance under this Act.

(B) Whenever the President receives information from any person alleging they have incurred costs of removal or damages resulting from the discharge or release of a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under section 4 of this Act, he shall notify the owner, operator, and guarantor of such vessel or onshore or offshore facility of such allegation. Such owner or operator or guarantor may, within five days after receiving such notification or presentation of any claim by a claimant, deny such allegations, or deny liability for

damages for any of the reasons set forth in subsection (a) of section 4 of this Act.

(C) The owner and operator of any vessel or onshore or offshore facility from which a hazardous substance has been discharged or released shall provide notice to all potential injured parties.

(D) All claims shall be presented in the first instance to the owner, operator, or guarantor of the vessel, or onshore or offshore facility from which a hazardous substance has been discharged or released, and to any other person liable under section 4. In any case where the claim has not been satisfied in accordance with this paragraph, the claimant may elect to commence an action in court against such owner, operator, or guarantor or other person or to present the claim for payment from the fund under this section.

(E) The fund administrator shall promptly review each claim application and enter an order which shall, within sixty days of application, either certify or deny certification as to the inquiry of the applicant. In making the determination, the fund administrator may require any medical tests or examinations of the claimant as deemed necessary to confirm the diagnosis or determination of the injury. The fund administrator may similarly require documentation, verification, and authentication of the amount of any claim for benefits.

(F) Any injured party who has filed a timely claim shall be entitled to benefits (by way of payment or reimbursement) for all medical costs pursuant to section 4(a)(2)(F) associated with the injury for which certification has been made by the fund administrator. Such benefit shall be paid within sixty days of certification: Provided, however, That no award for medical benefits other than for diagnostic services shall be made unless the injured party's medical expenses shall have been or will be at least $300.

(G)(i) Except as provided in clause (ii) of this subparagraph, the President shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5) upon a determination by the President that advertising is not reasonably practicable. The President shall establish procedures under subparagraph (A) of this paragraph for the approval and payment of claims. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the President.

(ii) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the President may use Federal personnel to process claims against the fund.

(iii) Without regard to subsection (b) of section 556 of title 5, United States Code, the President is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes regarding certifications, denials, or benefits which are filed by claimants. Panel members may be appointed from the private sector or from any Federal agency except the staff administering the fund. Each panel member appointed from the private sector shall receive a per diem compensation, and each panel member shall receive necessary travel and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from the private sector.

~~(E)~~ *(H)* No claim may be presented nor may an action be commenced for damages under this Act unless that claim is presented or action commenced within six years from the date of the discovery of the loss.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the costs of removal or damages from the person responsible or liable for such discharge or release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs of removal resulting from a discharge or release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal such claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and, without regard to ~~only~~ *any* limitation of liability, all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs of removal for which the compensation was paid.

(d) The Fund shall not be available to pay any claim for costs of removal or damages to the extent the discharge or

release or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(e)(1)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Director of the Fish and Wildlife Service, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge or release of a hazardous substance, for the purpose of section 4(a)(2) (C) and (D) of this Act, section 6(a)(1)(F) of this Act, and section 311(f) (4) and (5) of the Clean Water Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(2) In accordance with such regulations, damages for injury to, destruction of, or loss of natural resources resulting from a discharge or release of a hazardous substance, for the purposes of section 4(a)(2) (C) and (D) and section 6(a)(1)(F) of this Act and section 311(f) (4) and (5) of the Clean Water Act, shall be assessed by (A) the Director of the Fish and Wildlife Service for living natural resources and their supporting ecosystems over which such Service has management or conservation authority, (B) the Administrator of the National Oceanic and Atmospheric Administration for other natural resources in the marine environment beyond the baseline of the territorial sea, and (C) the Administrator of the Environmental Protection Agency for all other natural resources. Such officials shall act for the President as trustee under section 4(b) of this Act and section 311(f)(5) of the Clean Water Act.

(3) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of section 4(a)(2) (C) and (D) and section 6(a)(1)(F) of this Act and section 311(f) (4) and (5) of the Clean Water Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 4(b) of this Act or a Federal agency) in any judicial or

adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(f) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under section 4(b) of this Act or subsection (a)(1)(F) of this section for the restoration, rehabilitation, or replacement or aquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

(g) In the case of any discharge, release, or disposal in which the President has not taken action under section 3(c) of this Act, the United States Government shall not seek damages or bring an action to recover damages under this Act unless the discharge, release, or disposal presented a substantial danger to public health or welfare or caused a significant amount of damages.

~~(f)~~ *(h)* The ~~Comptroller General~~ *Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated* shall provide an audit review

team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. ~~The Comptroller~~ *Each such Inspector* General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. ~~The Comptroller~~ *Each such Inspector* General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the ~~Comptroller~~ *Inspector* General in carrying out this subsection.

FINANCIAL RESPONSIBILITY

SEC. 7. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry hazardous substances as cargo) using any port or place in the United States or the navigable waters or any offshore facility shall establish and maintain in accordance with section 311(p) of the Federal Water Pollution Control Act evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, $5,000,000, whichever is greater). The provisions of paragraphs (3), (4), (5), and (6) of such section 311(p) shall apply to any vessel, or the owner or operator thereof, subject to this section. This subsection shall take effect one hundred and eighty days after the enactment of this Act.

(2) Any vessel subject to the requirement of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any hazardous substances carried as cargo.

(b)(1) The owner or operator of any onshore or offshore facility shall establish and maintain evidence of financial responsibility consistent with the degree and duration of risks associated with the transportation, treatment, storage, or disposal of hazardous substances. Such evidence of financial responsibility shall be established according to regulations prescribed by the President and comparable to that required under section 311(p) of the Federal Water Pollution Control Act. This subsection shall take effect one hundred and eighty days after enactment of this Act.

(2) The owner or operator of any facility subject to this subsection who fails to comply with this subsection or the regulations prescribed thereunder shall be subject to a fine of not more than $10,000 per day of violation.

STATE LAWS AND PROGRAMS

SEC. 8. *(a)* Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the discharge of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages as provided in this Act.

LITIGATION AND CONFORMING AMENDMENTS

SEC. 9. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages.

(b) Except as provided in subsection (a) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or release or damages occurred, or in which the defendant resides, may be found, or does business.

(c) No provision of this Act shall be deemed or held to moot any litigation concerning any discharge, release, or disposal of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(d) Section 311 of the Clean Water Act is amended as follows:

(1) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 5 of the Environmental Emergency Response Act, as appropriate,".

(2) Subsection (f) is amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against any guarantor of an owner's or operator's liability under the Environmental Emergency Response Act,".

(3) Subsection (g) is amended, by inserting in the last sentence, after the word "party" the words "or against any guarantor of an owner's or operator's liability under the Environmental Emergency Response Act".

(4) One half of any sums appropriated prior to the enactment of this Act under subsection (k) of such section 311 and all sums appropriated under section

504(b) of the Clean Water Act shall be transferred to the Fund established under section 5 of this Act.

TRANSPORTATION-RELATED PROVISIONS

SEC. 10. (a) Each hazardous substance as listed or designated under section 2(13) (A) through (F) or section 3(a)(2) of this Act shall within ninety days after enactment of this Act or such listing or designation, whichever is later, be listed as a hazardous material under the Hazardous Materials Transportation Act.

(b) It is the sense of the Congress that (1) tariffs for common carriers and other regulated carriers allow the full transfer of costs associated with the carriage of hazardous substances, reflecting the relative hazards of such substances, (2) common carriers be authorized to refuse carriage or withdraw from a class of carriage of particular hazardous substances, and (3) common carriers be authorized to charge for special precautions in the handling or carriage of hazardous substances beyond those required by any law or regulation.

EXPIRATION

SEC. ~~10.~~ *11.* The authority to establish and collect fees pursuant to section 5 of this Act and the authority to obligate funds pursuant to section 6 of this Act shall expire October 1, 1986.

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[STAFF WORKING PAPER NO. 2]

JUNE 2, 1980

Calendar No.

96TH CONGRESS
2D SESSION

S. 1480

[Report No. 96-]

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JUNE 21), 1979

Mr. CULVER (for himself, Mr. MUSKIE, Mr. STAFFORD, Mr. CHAFEE, Mr. RANDOLPH, and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JUNE , 1980

Reported by Mr. , with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

11-888 O - 83 - 17

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Environmental Emergency Response Act".

PURPOSE AND DEFINITIONS

SEC. 2. *(a)* ~~For the purposes of this Act~~—*It is the intent of the Congress that this Act shall apply to hazardous substance disposal sites, facilities, and areas and to releases of hazardous substances from vessels and facilities (including rolling stock) into the navigable waters, groundwater, or air, or onto land.*

(b) For the purposes of this Act—

(1) the terms "discharge", "vessel", "public vessel", "United States", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", and "offshore facility", shall have the meaning provided in section 311(a) of the Clean Water Act;

(2) the terms "State", "person", "navigable waters", and "territorial seas" shall have the meaning provided in section 502 of the Clean Water Act;

(3) the terms "disposal", "hazardous waste", and "hazardous waste generation" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act and the terms "generator" and "transporter" shall

have the meaning apparent under subtitle C of the Solid Waste Disposal Act;

(4) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(5) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge, *release, or disposal* of a hazardous substance;

(6) the term "claimant" means any person who presents a claim for compensation under this Act;

(7) the term ~~"containment"~~ *"remedial action" or "remedy"* means those actions consistent with eventual permanent ~~remedy,~~ *remedial action* taken in the event of a discharge or release or significant threat of discharge or release of a hazardous substance *other than* from a hazardous substance disposal site ~~not~~ in compliance with a permit under subtitle C of the Solid Waste Disposal Act to prevent or minimize the discharge or release of hazardous substances so that they will not migrate to cause substantial danger to present or future public health or ~~safety,~~ *welfare*, or to the environment. The term includes, but is not limited to, such

onsite actions as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances, recycling or reuse, diversion, destruction, segregation of reactive wastes, the *repair and* replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, and any monitoring reasonably required to assure that such actions protect the public health *and welfare* and the environment. *The term includes the costs of permanent relocation of residences, businesses, and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or may otherwise be necessary to protect the public health or welfare.* The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances, *or the provision of permanent alternative drinking water supplies* unless the President determines that such actions ~~are (A) the most cost effective means of containment for such a hazardous substance disposal site over the expected period of con-~~

~~tainment, or (B)~~ *(A) are more cost-efficient than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those hazardous substances at the affected site; (C) are necessary to protect public health or safety or the environment from a present or potential risk which may be created by further exposure to the continued presence of such hazardous substances; or (D)* will result in less environmental impact than onsite ~~containment~~ *remedial actions* at such site;

(8) the term "damages" means damages for economic loss or personal injury or the loss of natural resources as specified in section 4(a)(2) of this Act;

~~(9) the term "emergency response" means actions which the President in his discretion determines must be immediately taken in the event of a discharge or release or the significant threat of a discharge or release of a hazardous substance to prevent, minimize, or mitigate damages or substantial danger to the public health or the environment associated with the discharge or release of hazardous substances. The term includes, but is not limited to, (A) security fencing or other measures; provision of alternative water supplies; temporary evacuation and housing of threatened individuals not~~

~~otherwise provided; and any emergency assistance which may be provided under the Disaster Relief Act of 1974; (B) the transportation, storage, destruction, or treatment and secure disposition offsite of hazardous substances where the President determines that, due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the substances and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger, such offsite actions are essential to protect the public health or safety or the environment; and (C) planning, legal, fiscal, economic investigations, engineering or architectural, to determine the feasibility of containment; monitoring and surveys to identify the extent of the discharge or release or threat of discharge or release, the hazardous substances involved, and the danger to public health, safety, or the environment; and studies, investigations, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions to provide for emergency response and containment or to recover the costs of such emergency response and containment.~~

(9) in addition to the meaning under section 311(a) of the Clean Water Act, the term "facility" includes any facility on submerged land and any site or

area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located;

(10) the term "Fund" means the Hazardous Substance Response Fund established under section 5 of this Act;

(11) the term "groundwater" means water in a saturated zone or stratem beneath the surface of land or water, and any other water used as a source of public drinking water;

(12) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act or section 311(p) of the Clean Water Act;

(13) the term "hazardous substance" means (A) any hazardous substance designated under section 311(b) of the Clean Water Act, (B) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act, (C) any toxic pollutant listed under section 307(a) of the Clean Water Act, (D) any hazardous air pollutant listed under section 112 of the Clean Air Act, (E) any imminently hazardous chemical substance or mixture as that term is defined in section 7 of the

Toxic Substances Control Act, (F) any substance or mixture which may be designated under section 3(a)~~(1)~~*(2)* of this Act, and (G) any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. *The term does not include petroleum, including crude oil and fractions thereof which are not otherwise specifically listed or designated as hazardous substances under subparagraphs (A) through (F) of this paragraph;*

(14) the term "natural resources" includes land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(15)*(A)* in the case of any abandoned onshore or offshore facility or ~~hazardous substance disposal~~ site, the term "owner or operator" shall include the person who owned or operated *or otherwise controlled activities at* such facility or site immediately prior to such abandonment or at the time of any discharge, release, or disposal of a hazardous substance;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the generator of such hazardous substance shall not be considered to have caused or contributed to any discharge or release during such transportation which resulted solely from circumstances or conditions beyond his control;

(16) the term "release" means—

(A) any spilling, leaking, pumping, pouring, emitting, emptying, discharging, *injecting,* escaping, leaching, or dumping *into the environment,* or

(B) any other release into the environment which presents or may present a substantial danger to the public health *or welfare* or the ~~envi-~~

~~ronment;~~ ~~and~~ *environment. Such term shall not include—*

(i) any release which results in exposure to persons solely within the workplace;

(ii) release of source, byproduct, or special nuclear material from (aa) a nuclear incident at a production or utilization facility, as those terms are defined in the Atomic Energy Act of 1954, to the extent such release results in liability under section 170 of such Act under a waiver of defenses specified in subsection n of such section, or, (bb) for the purposes of section 3(c) or any other removal or remedial action, any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978;

(iii) the normal field application of fertilizer; or

(iv) emissions from the exhaust of a motor vehicle;

(17)*(A)* the term "removal costs" or "costs of removal" means (i) costs incurred under section 311 (c), (d), (e), (b)(6) (C) or (D), or (f)(4) of the Clean Water Act in connection with a hazardous substance *(as de-*

fined in this Act), (*ii*) costs incurred under section 504(b) of the Clean Water Act, and (iii) other costs of measures taken to prevent, minimize or mitigate damages or substantial danger to the public health *or welfare* or the environment associated with the discharge, release, or disposal or threatened discharge, release, or disposal of a hazardous substance or to clean up or remove a hazardous substance from the environment, *including the costs of remedy; and*

(B) as part of the meaning of "remove" and "removal" under section 311(a) of the Clean Water Act and subparagraph (A) of this paragraph, such terms include, but are not limited to, security fencing or other measures; provision of alternative water supplies; temporary evacuation and housing of threatened individuals not otherwise provided; and any emergency assistance which may be provided under the Disaster Relief Act of 1974.

~~PROHIBITED~~ RELEASE, NOTICE, PENALTY, RESPONSE

SEC. 3. (a)(1) *The Congress hereby finds and declares that the manufacture, use, transportation, treatment, storage, disposal, and release of hazardous substances are ultrahazardous activities.*

(2) The President shall promulgate and revise as may be appropriate, regulations designating as hazardous sub-

stances, in addition to those referred to in section 2(13) of this Act, such elements and compounds which, when discharged or released in any quantity into the environment, may present substantial danger to the public health *or welfare* or the environment, and in such regulations may determine those quantities of any hazardous substance the discharge or release of which may be harmful to the public health *or welfare* or the environment.

~~(2) The discharge of any hazardous substance in violation of section 311(b)(3) of the Clean Water Act or the release or disposal of any hazardous substance, including any release into or upon groundwater, air, land, the navigable waters, or the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to or under the exclusive management authority of the United States (including, resources under the Fishery Conservation and Management Act of 1976), is prohibited.~~

(3)(A) Any person (including, for purposes of this subparagraph, any agency or department of the United States Government) in charge of a vessel or any public vessel owned by the United States or a State or political subdivision thereof or an onshore facility or an offshore facility shall, as soon as such person has knowledge of any discharge, release, or disposal of a hazardous substance from such vessel or facility ~~in violation of paragraph (2) of this subsection,~~ *other than in*

compliance with a permit issued under section 402 of the Clean Water Act, subtitle C of the Solid Waste Disposal Act, the Clean Air Act, title I of the Marine Protection, Research, and Sanctuaries Act, or the Safe Drinking Water Act, immediately notify the appropriate agency of the United States Government of such discharge, release, or disposal.

(B) Any person—

(i) in charge of a vessel from which a hazardous substance (other than as defined in section 2(13)(G) of this Act) is discharged or released ~~in violation of this subsection~~ *other than in compliance with a permit issued under section 402 of the Clean Water Act, subtitle C of the Solid Waste Disposal Act, the Clean Air Act, title I of the Marine Protection, Research, and Sanctuaries Act, or the Safe Drinking Water Act,* into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(ii) in charge of a vessel from which a hazardous substance (other than as defined in section 2(13)(G) of this Act) is discharged or released ~~in violation of this subsection~~ *other than in compliance with a permit issued under section 402 of the Clean Water Act, subtitle C of the Solid Waste Disposal Act, the Clean Air Act, title I of the Marine Protection, Research, and*

Sanctuaries Act, or the Safe Drinking Water Act, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the discharge or release, or

(iii) in charge of an onshore facility or an offshore facility from or at which a hazardous substance (other than as defined in section 2(13)(G) of this Act) is discharged, released, or disposed of ~~in violation of this subsection,~~ *other than in compliance with a permit issued under section 402 of the Clean Water Act, subtitle C of the Solid Waste Disposal Act, the Clean Air Act, title I of the Marine Protection, Research, and Sanctuaries Act, or the Safe Drinking Water Act*

who fails to notify immediately the appropriate agency of the United States Government as soon as such person has knowledge of such release, *discharge, or disposal* shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

(C) Within twenty-four hours of receipt of any notification required by subparagraph (B) (i) or (iii) of this paragraph, the administrator of said agency shall notify the af-

fected State agency or department designated by the Governor to receive notice of such discharge, release or disposal.

(4)(A) Within one hundred and eighty days after the enactment of this Act, any person who *owns or operates, or has reason to believe that he or she* may be subject to liability for, a ~~hazardous substance disposal site~~ *facility or site at which hazardous substances are stored or disposed of which is* not in compliance with a permit or accorded interim status under subtitle C of the Solid Waste Disposal Act shall notify the Administrator of the Environmental Protection Agency of the existence of such *facility or* site, specifying the amount and type of any hazardous substances to be found there, and any known, suspected, or likely discharges or releases of such substances from such *facility or* site. The Administrator may prescribe the manner and form of the notice and the information to be included. *The Administrator shall notify the affected State agency or department designated by the Governor to receive notice of such facility or site.* Any such person who knowingly fails to notify the Administrator of the existence of any such *facility or* site shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who fails to provide the notice required by this subsection shall not be entitled to any limitation of liability under this or any other

law or to any defenses to liability set out in section 4 of this Act.

(B) After the enactment of this Act, it shall be unlawful for any person required to provide the notification of a ~~hazardous substance disposal~~ *facility or* site set out in subparagraph (A) of this paragraph knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable ~~any records relating to the site or any hazardous substances~~ *or falsify any records relating to the location, title, or condition of the facility or site or the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances* contained or deposited therein. Any person who violates this subparagraph shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

(C) Any deed or conveyance for any facility or site at which any hazardous substance has been disposed of or stored, or which has been contaminated by any release of a hazardous substance, shall disclose upon its face the identity, quantity, location, condition, and circumstances of such disposal, storage, or contamination, to the full extent known to or ascertainable by the owner or other conveyer of such facility or site. Such deed or conveyance shall also contain such restrictive convenants limiting the subsequent use or modification of such facility or site as may be necessary to

protect the public health or welfare. The disclosures and restrictive covenants in such deed or conveyance shall be a matter of public record in the registry of deeds or similar institution for the county in which said facility or site is located. Any person who knowingly violates the requirements of this subparagraph shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person shall be held liable under section 4 of this Act as an owner of such facility or site in the case of any discharge, release, or disposal of a hazardous substance from such facility or site.

(b) The Administrator of the Environmental Protection Agency is authorized to establish and enforce, in accordance with section 3008 of the Solid Waste Disposal Act and sections 308 and 309 of the Clean Water Act, such control or removal requirements as the Administrator deems appropriate to protect the public health *and welfare* and the environment for any ~~hazardous substance disposal site~~ *facility or site at which hazardous substances are disposed of which is* not in compliance with a permit or accorded interim status under subtitle C of the Solid Waste Disposal Act.

(c)(1) Whenever any hazardous substance is discharged, released, or disposed of, or there is (A) a substantial threat of such a discharge or release into the environment, or (B) a release *or substantial threat of release* into the environment

of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare, the President is authorized to act to remove or arrange for the removal of, ~~or~~ *and* provide for ~~the containment of,~~ *remedial action concerning,* such hazardous substance, pollutant, or contaminant at any time (including the removal from any contaminated natural resource), or take any *other* emergency response measure which in the judgment of the President is necessary to protect the public health *or welfare* or the environment, unless the President determines such removal *and remedial action* will be done properly by the owner or operator of the vessel or onshore facility or offshore facility ~~or hazardous substance disposal site~~ from which the discharge or release occurs, or *by any* other responsible party.

(2) Unless (A) the President finds that (i) continued removal actions are immediately required to prevent, limit or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis; or (b) the President has determined the appropriate remedial actions as provided in paragraph (4) and the State or States in which the source of the release is located have complied with section 6(a)(2)(A) of this Act, expenditures from the Fund, other then those authorized by paragraph (3) of this

subsection, shall not continue after $1,000,000 has been obligated or six months has elapsed from the date of initial response to a release or discharge of hazardous substances.

(3) Whenever (A) any hazardous substance is released, discharged or disposed which, in the judgment of the President, may present a danger to public health or welfare or the environment, or (B) there is substantial threat of such release, or (C) the President has reason to believe that illness, disease or complaints thereof may be attributable to exposure to a chemical or other toxic substance, and there is evidence to suspect a release of such substance, the President may undertake such investigations, monitoring, surveys, testing or other information gathering as are necesary to identify the existence and extent of the discharge or release or threat thereof, the hazardous substances involved, the source of such substance, and the danger to public health, welfare or the environment. As appropriate, the President may, in addition, undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as are necessary to determine and direct removal and remedial actions, to recover the costs of such removal and remedial actions, and to enforce the provisions of this Act.

(4) The President shall determine appropriate remedial action in consultation with the State.

~~(2)~~ *(5)* Within one hundred and eighty days after the enactment of this Act, the President shall revise and republish the National Contingency Plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Clean Water Act to reflect and effectuate the responsibilities and powers created by this Act in addition to those matters specified in section 311(c)(2) of the Clean Water Act. Such revision shall include a new section of the Plan to be known as the National Hazardous Substance ~~Disposal Site~~ Response Plan, which shall include at a minimum—

(A) methods for discovering and investigating ~~such~~ sites *at which hazardous substances have been disposed of or otherwise come to be located;*

(B) methods for evaluating, including analyses of relative cost, and ~~containing~~ *remedying* any discharges or releases or threats of discharges or releases from such sites which pose substantial danger to the public health or the environment;

(C) methods and criteria for determining the appropriate extent of ~~emergency response,~~ *removal, remedy,* ~~containment,~~ and other measures authorized by this Act;

(D) appropriate roles and responsibilities for the Federal, State, and local governments and for inter-

state and nongovernmental entities in effectuating the Plan;

(E) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

(F) a method for and assignment of responsibility for reporting the existence of such sites which may be located on federally owned or controlled properties and any releases of hazardous substances from such sites. *Such plan shall specify a role for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefore. Such plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing or remedying releases of hazardous substances comparable to that required under section 311(c)(2) (F) and (G) and (j)(1) of the Clean Water Act.* Following publication of the revised National Contingency Plan, the removal of hazardous substances and actions to minimize damage from hazardous substance discharges or releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the National Contingency Plan.

(d) Notwithstanding any other provision of law, upon receipt of ~~evidence~~ *information* that the handling, storage, treatment, transportation, *release*, or disposal of any hazardous substance may present a danger to public health *or welfare* or the environment, the Administrator of the Environmental Protection Agency or the State (or their authorized agents as the case may be), may require any person contributing to such danger to take such actions as may be necessary to ascertain the nature and extent of such danger, or may bring suit in the appropriate district court of the United States to require any such person to take such actions.

LIABILITY FOR DAMAGES AND REMOVAL COSTS

SEC. 4. (a) Except where the person liable under this subsection can prove that a discharge, release, or disposal was caused solely by ~~(i)~~ an act of God or ~~(ii)~~ an act of war, and notwithstanding any other provision or rule of law—

(i) the owner or operator of a vessel or an onshore or offshore facility,

(ii) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances are disposed of,

(iii) any person who by contract, agreement, or otherwise arranged for disposal, treatment, or transport for disposal or treatment by any other party or entity of hazardous substances owned or possessed by such

person, at facilities or sites owned or operated by such other party or entity and containing such hazardous substances, and

(iv) any person who accepts any hazardous substances for transport to disposal or treatment facilities or sites selected by such person,

from which a hazardous substance is discharged, released, or disposed of ~~in violation of section 3(a) of this Act, including any release excluded from the definition of "discharge" under section 311(a)(2) of the Clean Water Act,~~ *or from which any pollutant or contaminant is released resulting in action under section 3(c)(1) of this Act,* ~~and any other person who caused or contributed or is causing or contributing to such discharge, release, or disposal, including but not limited to prior owners, lessees, and generators, transporters, or disposers of such hazardous substances,~~ shall be jointly, severally, and strictly liable for—

(1)(A) all costs of removal, ~~containment, or emergency response~~ *or remedial action* incurred by the United States Government or a State, and

(B) any other costs or expenses incurred by any person to remove a hazardous substance as the terms "remove" or "removal" are defined in section 311(a)(8) of the Clean Water Act; and

(2) all damages for economic loss or loss due to personal injury or loss of natural resources resulting from such a discharge, release, or disposal, including—

(A) any injury to, destruction of, or loss of any real or personal property, including relocation costs;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from *personal injury or from* injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources;

(F) all out-of-pocket medical expenses, including rehabilitation costs *or burial expenses,* due to personal injury; and

(G) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal

Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.

~~(c) Notwithstanding the ordinary requirements for proof of cause in fact or proximate cause of damage, injury, or loss, a person liable under this section for any discharge, release, or disposal of any hazardous substance shall be liable for all medical expenses under subsection (a)(2)(F) of this section if a reasonable person could conclude that such medical expenses and the injury or disease which caused them are reasonably related to such discharge, release or disposal, including, but not limited to, the consideration of statistical correlation and the increase of incidence of such injury or disease in the ex-~~

~~posed population above that which is otherwise statistically probable. The inability of a claimant to demonstrate (1) the particular identity of the substance which caused the injury or disease, (2) the particular source of such substance, (3) the pathway of such substance on route to the injured party, or (4) an explanation of the etiology of the substance in the injured party, shall not bar recovery.~~

(c)(1) LIABILITY FOR MEDICAL EXPENSES.—A person liable for the discharge, release, or disposal of any hazardous substance under this section shall be liable for medical expenses as defined in subsection (a)(2)(F) of this section where such expenses were incurred in the treatment of injury or disease which such discharge, release or disposal caused or to which it significantly contributed.

(2)(A) RELEVANCY EXCLUSIONS.—In connection with any claim for medical expense under paragraph (1) of this subsection, the court may admit as relevant to the issue of causation evidence tending to establish a likelihood that the hazardous substance in question causes or contributes to injury or disease of the sort claimed to have been suffered by the claimant, including, but without limitation, evidence indicating (i) an increase of incidence of such injury or disease in the exposed population above that which is otherwise probable, (ii) results of pertinent epidemiological studies (without regard to the size of the sample), (iii) results of pertinent

animal studies, (iv) results of pertinent tissue culture studies, (v) results of pertinent microorganism culture studies, and (vi) results of laboratory or toxicologic studies.

(B) PREJUDICE, CONFUSION AND WASTE OF TIME EXCLUSIONS.—Inconclusiveness of the medical or scientific evidence described in subparagraph (A) as to—

(i) the specific substance which caused the injury or disease,

(ii) the particular source of the substance,

(iii) the pathway by which the substance reached the claimant, or

(iv) the etiology of the substance in the claimant shall affect the weight of such evidence as determined by the trier of fact, and not the admissability of such evidence in the case of an objection on the grounds that it creates prejudice, confusion, or waste of court time.

(3)(A) PRESUMPTION OF CAUSE.—In connection with any claim for medical expenses brought pursuant to subparagraph (1) of this subsection, where the claimant introduces evidence sufficient to enable the trier of fact to find (i) that the claimant was exposed to a hazardous substance found in a discharge, release, or disposal which the defendant caused or to which he contributed, and (ii) that there exists a reasonable likelihood that exposure to such substance causes or significantly contributes to injury or disease of the class or type

which the claimant claims to have suffered, then it shall be presumed that defendant caused or significantly contributed to that injury or disease.

(B) The presumption defined in subparagraph (A) of this subsection affects the burden of persuasion, and shifts to the defendant the burden of persuading the trier of fact by a preponderance of the evidence that claimant's exposure to the substance in question did not cause or significantly contribute to the injury or disease which the claimant claims to have suffered.

(d) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent as any nongovernmental entity, including liability for removal costs under section 4 of this Act.

(e) The owner or operator of a vessel shall be liable in accordance with this section and section 311 of the Federal Water Pollution Control Act and as provided under section 8 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

~~(f) Any generator or transporter of any hazardous substance who knew or had reason to know that a discharge, release, or disposal of such hazardous substance could reasonably be anticipated to result from the transfer of such sub-~~

~~stance to the owner or operator of the facility which was the source of a discharge, release, or disposal subject to liability under this section shall be deemed to be a person who caused or contributed to such discharge, release, or disposal.~~

(f)(1) In any case where a person held liable under this section can demonstrate by a preponderance of the evidence that (A) the contribution of such person to a discharge, release, or disposal of a hazardous substance can be distinguished or apportioned and (B) such contribution was not a significant factor in causing or contributing to the discharge, release, or disposal or the damages resulting therefrom, the liability of such person may, in the discretion of the trier of fact, be limited to that portion of the release or damages to which such person contributed.

(2) In any action brought under this section or section 6(c) of this Act, a person held jointly and severally liable with one or more other persons is entitled to seek contribution from such persons to the extent of the proportionate liability of such persons. In any case where a person held liable under this section alleges that the discharge, release, or disposal or the consequent damages are solely or in part due to the act or omission of a third party, such person retains all rights against such third party and shall be entitled to join such third party as a defendant in an action under this section or section 6(c) of this Act.

(3) Any matter or action concerning limitation or apportionment of liability under paragraph (1) or contribution under paragraph (2) of this subsection shall occur following determination of liability under subsection (a) of this section and appropriate payment of claims to any claimant, except to the extent such matter may be resolved pursuant to Rule 56 of the Federal Rules of Civil Procedure. The claimant is not an indispensable party in such matter or action.

(g) If the owner or operator of a ~~hazardous substance disposal site,~~ *facility or site at which hazardous substances are stored or disposed of,* who owned or operated the property at the time it was utilized for the *storage or* disposal of any hazardous substances, and who utilized the site at that time for the *storage or* disposal of any hazardous substances produced, transported, *stored,* or disposed of by such owner or operator, fail to properly provide ~~emergency response or containment~~ *removal or remedial action* upon request of the President, such owner or operator shall be liable to the United States for punitive damages in an amount three times the amount of any removal costs expended by the Fund under this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(h) No person shall be liable under this Act for damages as a result of acts taken or omitted in preparation for, or in the course of rendering care, assistance, or advice in accord-

ance with the National Contingency Plan or at the direction of an on-scene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the possibility thereof. This paragraph shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(i) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer from the owner or operator of a facility, or from any person who may be liable for a release under this section, to any other person the liability imposed under this section: Provided, That this subsection shall not apply to a trasfer in a bona fide conveyance of a facility or site (1) between two parties not affiliated with each other in any way, (2) where there has been an adequate disclosure in writing consistent with section 3(a)(4)(C) of this Act of all facts and conditions (including potential economic consequences) material to such liability, and (3) to a transferor who can provide assurances of financial responsiblity and continuity of operation consistent with the degree and duration of risks associated with such facility or site.

(j) Post closure liability.—**[COPY TO COME]**

(k) No person (including the United States or any State) may recover under the authority of this section for any removal costs or damages resulting from the field application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or the costs of removal of such hazardous substance.

RESPONSE FUND ESTABLISHMENT

SEC. 5. (a) There is hereby established in the Treasury of the United States a Hazardous Substance Response Fund ~~not to exceed $500,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b) (2) and (3) of this section being paid into such Fund.~~ The Fund shall be administered by the President and the Secretary of the Treasury, as specified in this section. The Fund may sue and be sued in its own name.

(b)*(1)* The Fund shall be constituted from—

~~(1)~~*(A)* all fees collected pursuant to subsection (c);

~~(2)~~*(B)* all moneys recovered on behalf of the Fund under section 6;

~~(3)~~*(C)* all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act;

(D) amounts appropriated to the Fund pursuant to paragraph (3) of this subsection;

(E) all moneys transferred to the Fund under section 9(d)(4) of this Act;

(F) all interest received from the investment of moneys held by the Fund pursuant to subsection (d)(2).

(2) The total amount which may be collected in fees under subsection (c) shall not exceed—

(A) $250,000,000 for fiscal year 1981,

(B) $525,000,000 for fiscal year 1982, and

(C) $700,000,000 for each of fiscal years 1983 through 1986.

(3) There are authorized to be appropriated to the Fund for the fiscal year—

(A) 1981, $35,000,000,

(B) 1982, $75,000,000,

(C) 1983 and each fiscal year thereafter through 1986, $100,000,000.

(c)(1) Beginning ninety days after the enactment of this Act, the Secretary of the Treasury shall collect ~~from each~~

~~manufacturer, importer, or generator of a hazardous substance, as appropriate,~~ a fee ~~on each unit of hazardous substance produced, manufactured, or imported into the United States and each unit of hazardous waste generated. The unit for application of such fees shall be the quantity determined under section 311(b)(4) of the Clean Water Act, or the minimum quantity required to be reported under section 2002, 2003, 2004, or 2005 of the Solid Waste Disposal Act, or such other unit as the President determines to be appropriate for the measurement of such fee. Any such fees shall be established, or modified pursuant to paragraph (2) of this subsection, at levels adequate to assure, to the extent reasonably possible, that (A) the percentage of the total fees collected from each of the various categories of hazardous substance and modes of discharge or release is equitable, based upon the claims and payments experience of the Fund and projections thereof, (B) com;lexity in application and collection of such fees is minimized, (C) the costs imposed by such fees are spread as broadly as possible through the economy, and (D) incentives to proper handling and disincentives to improper or illegal handling or disposal of hazardous substances are maximized.~~ [COPY TO COME]

(2) The Secretary of the Treasury, after consulting with appropriate Federal agencies, may promulgate rules and regulations relating to the collection of the fees authorized by

paragraph (1) and, from time to time, the modification thereof. Modifications shall become effective on the date specified therein, but no earlier than the ninetieth day following the date the modifying regulation is published in the Federal Register. Any modification of the fee shall be designed to assure that the Fund is maintained at a level adequate to meet potential obligations. ~~and not more than $500,000,000.~~ No regulation that modifies fees, nor any modification of such a regulation, whether or not in effect, may be stayed by any court pending completion of judicial review of that regulation or modification.

(3)(A) Any person who fails to collect or pay fees as required by the regulations promulgated under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid and the interest on those fees at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (d)(2). Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General shall, at the request of the Secretary of the Treasury bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated

under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such required material for the purpose of audit and examination.

(d)(1) The President shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund. *In any fiscal year, two-thirds of the money credited to the Fund as provided in subsection (b) (2) and (3) shall be available only for—*

(A) costs of removal as provided under section 6(a)(1) (A), (B), (C), and (G);

(B) all other costs as provided for under section 6(a)(1) (C), (D), (E), (F), (H), (I), (J), and (L); and

(C) that portion of administrative and personnel costs under section 6(a)(1)(K) which are incident to the costs in subparagraphs (A) and (B) of this paragraph.

(2) The Secretary of the Treasury may invest any excess in the Fund, ~~above the level determined under paragraph (1),~~ in interest-bearing special obligations of the United

States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the President shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of these notes or obligations shall be made by the President from moneys in the Fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any note or other obligations issued hereunder and, for that purpose, is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or

other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States. The authority of the President to issue notes or other obligations under this subsection shall be subject to such amounts as are provided in appropriation Acts.

(f) The Administrator of the Environmental Protection ~~Agency,~~ *Agency and* the Commandant of the Coast Guard~~, and the Comptroller General~~ shall undertake a study of possible incentives to safer operation of vessels and facilities to reduce the potential of discharges or releases of hazardous substances, and generally of measures to prevent or avoid the occurrence of such discharges or releases. Such study shall address (1) the feasibility of a variable fee for replenishment of the Fund under subsection (c) of this section which takes into account the likelihood of a discharge or release and the operational experience of individuals or classes, and (2) whether current practices in the insurance and banking industries provide any incentives or disincentives to reducing the potential for discharges or releases of hazardous substances. Such study shall be conducted in consultation with other appropriate Federal and State agencies, the affected industries, and other interested parties. A first report of such study, together with legislative recommendations, if

any, shall be submitted to the Congress not later than one year after enactment of this Act and as appropriate thereafter.

USE OF RESPONSE FUND

SEC. 6. (a)(1) The President shall use the money in the Fund for the following purposes:

(A) payment of any claim for costs of removal or damages *under section 4(a)(2) (C), (E), or (F)* where the source of the discharge or release of a hazardous substance, or a person liable for such costs of removal or damages, is not known or cannot be identified;

(B) payment of any claim for costs of removal or damages *under section 4(a)(2) (C), (E), or (F)* in any case where the claim has not been satisfied in accordance with subsection (b) of this section;

(C) all removal costs or expenses, costs of ~~containment or emergency response,~~ *remedial action,* or other costs of carrying out the national contingency plan established under section 311(c) of the Clean Water Act or as amended under section 3 of this Act, including removal costs incurred by any person and approved under such national contingency plan;

(D) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this

Act and section 311 of the Clean Water Act, *and needed to supplement equipment and services available through contractors or other non-Federal entities,* and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under such national contingency plan;

(E) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge or release of a hazardous substance;

(F) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge or release of a hazardous substance;

(G) reimbursement to any State for the payment of any claims for costs of removal or damages *under section 4(a)(2) (C), (E), or (F)* payable under this Act which such State has paid with funds under the control of such State pursuant to the national contingency plan ~~or to a delegation~~ *and a contract* under subsection (b) of this section;

(H) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify,

investigate, and take enforcement and abatement action against ~~hazardous substance disposal sites;~~ *releases, discharges, and disposal of hazardous substances;*

(I) subject to such amounts as are provided in appropriation Acts, not to exceed $10,000,000 per fiscal year, the costs of research related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act, to be performed by Federal agencies including the Environmental Protection Agency, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration. Such research shall include, but not be limited to (i) development and refinement of protocols to determine the type and extent of short and long term injury or loss of natural resources, (ii) development and refinement of the best available procedures to identify the value of injured or lost *natural* resources, (iii) laboratory or field research on the effects of hazardous substances on living and nonliving resources that will provide additional scientific basis for damage assessments, and (iv) research on minimizing the damage caused by spill control, dispersal, *remedial action,* and removal operations. Responsibility under the preceding sentence shall be assigned in accordance with the assessment responsibilities estab-

lished under subsection (e)(2) of this section and officials responsible for such assessments shall be consulted before proposal of any research plan or appropriation request under the preceding sentence;

(J) subject to such amounts as are provided in appropriation Acts, the costs of research to develop mobile or portable onsite technology for response at ~~hazardous substance disposal sites,~~ *facilities or sites at which hazardous substances are present,* technology for onsite treatment, or ~~containment~~ *remedy* of releases into groundwater, or other technology for the containment, treatment, or secure disposition of hazardous substances;

(K) subject to such amounts as are provided in appropriation Acts, the administrative and personnel costs of administering the Fund and this ~~Act.~~ *Act;*

(L) the costs of epidemiologic studies, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances are suffering from long-latency diseases;

(M) the reasonable costs of expert witnesses employed by claimants in actions to recover damages

under section 4 of this Act, to the extent authorized by the court, and the costs of neutral expert panels which may be established in such actions by the court, sua sponte or on the motion of any party.

(2)(A) The President shall not use any money in the Fund for ~~any removal~~ *the* costs *of any remedial action* associated with a discharge or release of a hazardous substance ~~from a hazardous waste disposal site not in compliance with a permit under subtitle C of the Solid Waste Disposal Act, other than the costs of emergency response,~~ unless the State in which the site is located first provides adequate assurance that (i) such State will use such money to provide for or otherwise assure any and all future maintenance of ~~containment measures~~ *removal and remedial actions* for the expected life of ~~the containment,~~ *such actions,* (ii) such State will assure the availability of a hazardous waste disposal facility acceptable to the Administrator *and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act* for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances, (iii) such State will bear 10 per centum of such costs of ~~removal;~~ *remedial action;* and (iv) the Fund will recover at least 50 per centum or such greater amount as the President shall determine appropriate, *taking into account the degree of culpability and financial capability of the State or political subdivi-*

sion, of any sums expended on ~~containment~~ *removal or remedial action* at a hazardous substance disposal site owned at the time of any disposal by a State or a political subdivision of a State. *The President is authorized to reduce the State share under clause (iii) of this subparagraph by the amount of documented direct out-of-pocket costs of removal and claims for damages payable under section 4(a)(2) (C), (E), and (F) of this Act which such State or a political subdivision thereof has paid with non-Federal funds since January 1, 1978. Nothing in this section shall prevent a State or political subdivision thereof from bringing an action to recover from any person who is liable, pursuant to any law, any sums expended by a State or its political subdivision pursuant to this subsection.*

(B) The President, *after consultation with State and local governments and affected private interests,* shall identify *and publish*—

(i) ~~national priorities for response based on methods and criteria for determining such response priorities, including the role of the States in determining State priorities for response, and in assisting the President in the determination of national priorities for response,~~ *criteria for determining priorities among releases or threatened releases throughout the United States (aa) for the purpose of taking remedial action,*

and (bb) to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. A list identifying priorities among known disposal sites or other releases for the purpose of taking remedial action shall be published not later than ninety days after the date of enactment of this Act and shall be revised at least annually thereafter. Criteria and priorities under this clause shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account, to the extent possible, ~~the significance of the threat to public health, safety, and the environment;~~ the population at risk; the hazard potential of the hazardous substances at such sites; the potential for contamination of drinking water supplies; the potential for direct human contact; the potential for destruction of sensitive ecosystems; State preparedness to assume State costs and responsibilities; and other appropriate ~~factors; and~~ *factors. In establishing national priorities the President shall consider any priorities established by the States under clause (ii) of this subparagraph;*

(ii) Within twelve months after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the

President, priorities for remedial action among releases and potential releases in that State which present, or may present, a substantial threat to public health or the environment. Such priorities shall be established in accordance with the criteria published under clause (i) of this subparagraph and consistent with the National Contingency Plan as revised under section 3(c) of this Act.

~~(ii)~~*(iii)* a system, including the use of contracts, whereby the State or States affected by a discharge or release of hazardous substances ~~from a hazardous waste disposal site~~ may act where necessary to provide ~~emergency response and containment~~ *removal and remedial action in accordance with the priorities established under clause (i)* and may be reimbursed for the reasonable costs incurred for such ~~response and containment~~ *measures* from the Fund.

(3)(A) Payment of any claim for out-of-pocket medical expenses under this section shall be limited to those incurred within six years after the initial exposure to a hazardous substance in a discharge, release, or disposal.

(B) Payment of any claim for lost wages or other personal income under section 4(a)(2)(E) of this Act shall be limited to 100 per centum of the actual net amount lost in the first year following the commencement of such loss and 80

per centum of the actual amount lost in the second year following the commencement of such loss.

(4) The fund shall not be used for the payment of any claims for damages under section 4(a)(2) (A), (B), (D), (E), (F), or (G) resulting from the field application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act.

(b)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a ~~cooperative agreement~~ *contract* with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for costs of removal or damages resulting from the discharge or release of a hazardous substance under this Act.

(B) Whenever the President receives information from any person alleging they have incurred costs of removal or damages resulting from the discharge or release of a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under section 4 of this Act, he shall notify the owner, operator, and guarantor of such vessel or onshore or offshore facility of such allegation. Such owner or operator or guarantor may, within five days after receiving such notification or presentation of any claim by a claimant, deny such allegations, or deny liability for damages for any of the reasons set forth in subsection (a) of section 4 of this Act.

(C) The owner and operator of any vessel or onshore or offshore facility from which a hazardous substance has been discharged or released shall provide notice to all potential injured parties.

(D) All claims shall be presented in the first instance to the owner, operator, or guarantor of the vessel, or onshore or offshore facility from which a hazardous substance has been discharged or released, and to any other person liable under section 4. In any case where the claim has not been satisfied in accordance with this paragraph, the claimant may elect to commence an action in court against such owner, operator, or guarantor or other person or to present the claim for payment from the fund under this section.

(E) The fund administrator shall promptly review each claim application and enter an order which shall, within sixty days of application, either certify or deny certification as to the injury of the applicant. In making the determination, the fund administrator may require any medical tests or examinations of the claimant as deemed necessary to confirm the diagnosis or determination of the injury. The fund administrator may similarly require documentation, verification, and authentication of the amount of any claim for benefits.

(F) Any injured party who has filed a timely claim shall be entitled to benefits (by way of payment or reimbursement) for all medical costs pursuant to section 4(a)(2)(F) associated with the injury for which certification has been made by the fund administrator. Such benefit shall be paid within sixty days of certification: Provided, however, That no award for medical benefits other than for diagnostic services shall be made unless the injured party's medical expenses shall have been or will be at least $300.

(G)(i) Except as provided in clause (ii) of this subparagraph, the President shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this

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paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5) upon a determination by the President that advertising is not reasonably practicable. The President shall establish procedures under subparagraph (A) of this paragraph for the approval and payment of claims. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the President.

(ii) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the President may use Federal personnel to process claims against the fund.

(iii) Without regard to subsection (b) of section 556 of title 5, United States Code, the President is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes regarding certifications, denials, or benefits which are filed by claimants. Panel members may be appointed from the private sector or from any Federal agency except the staff administering the fund. Each panel member appointed from the private sector shall receive a per diem compensation, and each panel member shall receive necessary travel and other ex-

penses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from the private sector.

~~(E)~~ *(H)* No claim may be presented nor may an action be commenced for damages under this Act unless that claim is presented or action commenced within ~~six~~ *three* years from the date of the discovery of the loss *or the date of enactment of this Act, whichever is later.*

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the costs of removal or damages from the person responsible or liable for such discharge or release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs of removal resulting from a discharge or release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal such claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and, without regard to ~~only~~ *any* limitation of

liability, all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs of removal for which the compensation was paid.

(d) The Fund shall not be available to pay any claim for costs of removal or damages to the extent the discharge or release or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(e)(1)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Director of the Fish and Wildlife Service, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge or release of a hazardous substance, for the purpose of section 4(a)(2) (C) and (D) of this Act, section 6(a)(1)(F) of this Act, and section 311(f) (4) and (5) of the Clean Water Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based

on units of discharge or release or units of affected area, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(2) In accordance with such regulations, damages for injury to, destruction of, or loss of natural resources resulting from a discharge or release of a hazardous substance, for the purposes of section 4(a)(2) (C) and (D) and section 6(a)(1)(F) of this Act and section 311(f) (4) and (5) of the Clean Water Act, shall be assessed by (A) the Director of the Fish and Wildlife Service for living natural resources and their supporting ecosystems over which such Service has management or conservation authority, (B) the Administrator of the National Oceanic and Atmospheric Administration for other natural resources in the marine environment beyond the baseline of the territorial sea, and (C) the Administrator of the Environmental Protection Agency for all other natural resources. Such officials shall act for the President as trustee under sec-

tion 4(b) of this Act and section 311(f)(5) of the Clean Water Act.

(3) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of section 4(a)(2) (C) and (D) and section 6(a)(1)(F) of this Act and section 311(f) (4) and (5) of the Clean Water Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 4(b) of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(f) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under section 4(b) of this Act or subsection (a)(1)(F) of this section for the restoration, rehabilitation, or replacement or aquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

(g) In the case of any discharge, release, or disposal in which the President has not taken action under section 3(c) of this Act, the United States Government shall not seek damages or bring an action to recover damages under this Act unless the discharge, release, or disposal presented a substantial danger to public health or welfare or caused a significant amount of damages.

~~(f)~~ *(h)* The ~~Comptroller General~~ *Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated* shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. ~~The Comptroller~~ *Each such Inspector* General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. ~~The Comptroller~~ *Each such Inspector* General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the ~~Comptroller~~ *Inspector* General in carrying out this subsection.

FINANCIAL RESPONSIBILITY

SEC. 7. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry hazardous substances as cargo) using any

port or place in the United States or the navigable waters or any offshore facility shall establish and maintain in accordance with section 311(p) of the Federal Water Pollution Control Act evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, $5,000,000, whichever is greater). The provisions of paragraphs (3), (4), (5), and (6) of such section 311(p) shall apply to any vessel, or the owner or operator thereof, subject to this section. This subsection shall take effect one hundred and eighty days after the enactment of this Act.

(2) Any vessel subject to the requirement of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any hazardous substances carried as cargo.

(b)(1) The owner or operator of any onshore or offshore facility shall establish and maintain evidence of financial responsibility consistent with the degree and duration of risks associated with the transportation, treatment, storage, or disposal of hazardous substances. Such evidence of financial responsibility shall be established according to regulations prescribed by the President and comparable to that required under section 311(p) of the Federal Water Pollution Control Act. This subsection shall take effect one hundred and eighty days after enactment of this Act.

(2) The owner or operator of any facility subject to this subsection who fails to comply with this subsection or the regulations prescribed thereunder shall be subject to a fine of not more than $10,000 per day of violation.

STATE LAWS AND PROGRAMS

SEC. 8. *(a)* Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the discharge of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages as provided in this Act.

LITIGATION AND CONFORMING AMENDMENTS

SEC. 9. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall

not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages.

(b) Except as provided in subsection (a) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or release or damages occurred, or in which the defendant resides, may be found, or does business.

(c) No provision of this Act shall be deemed or held to moot any litigation concerning any discharge, release, or disposal of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(d) Section 311 of the Clean Water Act is amended as follows:

(1) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 5 of the Environmental Emergency Response Act, as appropriate,".

(2) Subsection (f) is amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against any guarantor of an owner's or operator's lia-

bility under the Environmental Emergency Response Act,".

(3) Subsection (g) is amended, by inserting in the last sentence, after the word "party" the words "or against any guarantor of an owner's or operator's liability under the Environmental Emergency Response Act".

(4) One half of any sums appropriated prior to the enactment of this Act under subsection (k) of such section 311 and all sums appropriated under section 504(b) of the Clean Water Act shall be transferred to the Fund established under section 5 of this Act.

TRANSPORTATION-RELATED PROVISIONS

SEC. 10. (a) Each hazardous substance as listed or designated under section 2(13) (A) through (F) or section 3(a)(2) of this Act shall within ninety days after enactment of this Act or such listing or designation, whichever is later, be listed as a hazardous material under the Hazardous Materials Transportation Act.

(b) It is the sense of the Congress that (1) tariffs for common carriers and other regulated carriers allow the full transfer of costs associated with the carriage of hazardous substances, reflecting the relative hazards of such substances, (2) common carriers be authorized to refuse carriage or withdraw from a class of carriage of particular hazardous sub-

stances, and (3) common carriers be authorized to charge for special precautions in the handling or carriage of hazardous substances beyond those required by any law or regulation.

EXPIRATION

SEC. ~~10.~~ *11.* The authority to establish and collect fees pursuant to section 5 of this Act and the authority to obligate funds pursuant to section 6 of this Act shall expire October 1, 1986.

Calendar No. 933

96TH CONGRESS
2d Session
SENATE
REPORT
No. 96-848

ENVIRONMENTAL EMERGENCY RESPONSE ACT

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 1480

together with

MINORITY, ADDITIONAL, AND SUPPLEMENTAL VIEWS

JULY 11, 1980.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1980

64-808 O

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Calendar No. 933

96TH CONGRESS
2d Session

SENATE

REPORT
No. 96-848

ENVIRONMENTAL EMERGENCY RESPONSE ACT

JULY 11, 1980.—Ordered to be printed
Filed under authority of the order of the Senate of July 2 (legislative day, June 12), 1980

Mr. CULVER, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1480]

together with

MINORITY, ADDITIONAL, AND SUPPLEMENTAL VIEWS

The Committee on Environment and Public Works, to which was referred the bill (S. 1480) to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PREFACE

The Committee reported a bill on June 27, 1980, which actually has its roots in the liability and funding provisions provided in the Clean Water Act of 1972. The current legislation, S. 1480, was introduced on July 11, 1979, and creates a liability and compensation scheme to address spills and all other releases of hazardous substances into the environment.

The Committee held a total of 11 days of hearings from March 28, 1979, to September 7, 1979, including 8 hearing days in Washington, D.C., and one each in Niagara Falls, New York, Charles City, Iowa, and San Francisco, California. A total of 74 witnesses gave public testimony at these hearings, which along with submitted testimony comprised 1,723 pages of printed record.

This report shall include a general statement which will discuss the problems addressed in S. 1480 and the goals and basic elements of the new legislation; a general summary of the reported bill; and a more specific analysis of major provisions.

GENERAL STATEMENT

I. The Problem

Modern chemical technology has produced miracles which have greatly improved this Nation's standard of living. But the increased generation of hazardous substances associated with these new products has proved to be a serious threat to our Nation's public health and environment.

The legacy of past haphazard disposal of chemical wastes and the continuing danger of spills and other releases of dangerous chemicals pose what many call the most serious health and environmental challenge of the decade. Chemical spills capable of inflicting environmental harm occur about 3,500 times each year, and an estimated $65 to $260 million is needed to clean them up. More than 2,000 dumpsites containing hazardous chemicals are believed by the Environmental Protection Agency to pose threats to the public health. The costs of containing their contents is estimated to be an average of $3.6 million per site.

Federal legislation has been passed and regulations have been developed which authorize government review of new toxic chemicals being placed on the market, and impose standards for new hazardous waste disposal facilities.

But the Committee on Environment and Public Works encountered additional national environmental problems caused by dangerous chemicals—problems which could not be addressed by the Toxic Substances Control Act or the Solid Waste Disposal Act. These problems involve the pollution of our people and our land by improper disposal, by accidents or misuse of those products.

Today, more than 43,000 chemical substances are in commercial production, and thousands of new ones are introduced each year. Worldwide chemicals sales of the top 50 U.S. chemical producers was $90 billion in 1979. In 1978, 32 of the 50 leading chemical producers had sales of more than $1 billion each, and 5 of those 50 had sales of $5 billion or more. The growth of the chemical industry was even greater in 1979 than in 1978. As a result, the potential impact of toxic chemicals on the general public and environment through unsound hazardous disposal sites and other releases of chemicals is tremendous.

The acceptance of man-made chemicals—to the extent that they are hardly recognized as such anymore—has become a fact of daily life in the United States. We are dependent on synthetic chemicals for health, livelihood, housing, transportation, food, and for our funerals.

But within recent years, there has been a realization that what is our meat may also be our poison.

Item.—On June 6, 1980 the Director of the National Institute of Environmental Health Sciences testified before the Senate Subcommittee on Health and Scientific Research as follows:

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QUESTION. Is it likely that there is a person in this room who is not contaminated by some synthetic chemical?

Dr. RALL. * * * most unlikely.

There are a series of resident pesticides beginning with DDT, aldrin, dieldrin, heptachlor, chlordane and so forth. Most people carry traces of those compounds today.

The polychlorinated biphenyls, probably most people carry body burdens in their fat, on the order of 5 parts per million * * *

Over 95 percent of the people in the United States have detectable levels of pentachlorophenol * * * (which) is contaminated with significant amounts of hexa-, hepta-, and octachlorinated dibenzodioxins.

QUESTION. What sorts of health problems might these chemicals cause?

Dr. RALL. A great variety of health problems. The hexachlorodibenzodioxin is probably a carcinogen. Many of the other compounds can cause neurological or renal damage, cause mutations and so forth.

QUESTION. What is the size of the population at risk here?

Dr. RALL. * * * The size of the population could extend up to the entire population of the United States.

Item.—In a report dated March, 1980 the Library of Congress concluded that damages to natural resources of the United States because of toxic chemicals were "substantial and enduring." The report identified damaged resources ranging from all five of the Great Lakes to the aquifer underlying the San Joaquin Valley, possibly the richest agricultural area in the United States.

Item.—In a report to the President of the United States, the Toxic Substances Strategy Committee concluded that the cancer death rate in the United States had increased sharply and that "occupational exposure to carcinogens is believed to be a factor in more than 20 percent of all cases of cancer."

Item.—In a report released in the Spring of 1980, by the Office of Technology Assessment, agricultural losses because of chemical contamination were placed at $283 million. OTA said the value was based on economic data from only six of the fifty states and was therefore "likely to be a gross underestimation of the actual costs."

In 1979, the total production of chemicals in the United States was 565 billion pounds. Of this amount, 347 billion pounds was of chemicals officially classified by the United States government as hazardous. Production growth is increasing at a rate of 7.6 percent in 1979. At that rate, production will double in ten years.

HAZARDOUS WASTES AND WASTE SITES

The Environmental Protection Agency estimates that 57 million metric tons of hazardous wastes are produced annually in the United States, or about 600 pounds of hazardous wastes per American in a year, and that this amount grows at a rate of 3.5 percent per year. More than 90 percent of this waste is believed to be disposed of in environmentally unsound ways. These unsound disposal methods include

haphazard land disposal, improper storage of dangerous substances and illicit dumping.

The effects of poor disposal methods and abandoned waste disposal sites can be the contamination of surface water and groundwater, causing contamination of drinking water supplies, destruction of fish, wildlife and vegetation, and threats to public safety due to health hazards and threats of fires and explosions.

Because there is no required reporting or data collection system in any one centralized government agency, the evidence sustaining the conclusion that a grave problem exists is best presented by anecdotes and a variety of studies.

Examples of waste site incidents include:

At Toone, Tennessee, a chemical company dumped pesticide wastes for years in an area close to groundwater supplies. In 1978, after continued assurances to the community from government officials that their water was safe to drink, the water supply of Toone was found to be contaminated six years after the closure of the nearby landfill site.

In 1978, the Cedar River, near Charles City, Iowa, was found to contain poisons leached from a nearby dumpsite. The poisons were detected as far away as 60 miles downstream. This river and the aquifer underlying the dump supply drinking water to 10% of the State's population.

About 25 miles south of Louisville, Kentucky, 17,000 drums were disposed of at a seven acre site. Six thousand drums, in this area which became known as the "Valley of the Drums," were oozing toxic chemicals onto the ground. Other drums with hazardous contents were buried in subsurface pits. The Environmental Protection Agency identified approximately 200 organic chemicals and 30 metals in the drainage area.

A variety of recent studies and surveys highlight the scope of the problem:

Using existing documentation, the Agency identified some 250 hazardous waste sites involving damages or significant threats of damages. Among the reported incidents were 27 sites associated with actual damages to health (kidneys, cancer, mutations, aborted pregnancies, etc.), 32 sites which have resulted in the closure of public and private drinking water wells, 130 sites with contaminated groundwaters and 74 sites where natural habitats have been damaged and are adversely affecting indigenous species.

As of June 1, the Agency's Hazardous Waste Enforcement and Response Task Force has identified 5,790 hazardous waste sites which were to be investigated to determine whether problems requiring cleanup exist. The Agency had inspected 1,001 of these sites, and concluded that remedial actions are warranted at 342 sites. No action was deemed necessary at 221 sites, and investigations were continuing at the remaining sites inspected.

A survey requested by Representative Robert Eckhardt for the House Committee on Interstate and Foreign Commerce found 3,383 waste disposal sites used by the 53 largest chemical companies since 1950. Of these, one third (1,099) are outside any authorized Federal

regulatory scheme. These 1,099 sites include "orphan" sites and inactive sites with known owners and contain 100 million tons of chemical wastes. The survey found that since 1950, some 960 waste haulers were employed by the 53 largest chemical companies to transport 4.8 million tons of wastes to locations unknown to the companies. Eleven percent of the facilities (176) operated by these large companies reported they did not know where any of the wastes generated since 1950 were disposed, and 37 percent (594 facilities) did not know the disposal location of all of their chemical wastes. Not all of the wastes in this survey are hazardous.

A Department of Health and Human Services' report released in June, 1980 concluded that "the scope of the health problem that could derive from chemical waste dumps cannot be precisely estimated at present. The problem could be enormous".

The preliminary findings of a joint States/EPA survey of pits, ponds and lagoons used to treat, store and dispose of liquid wastes identify 11,000 industrial sites with 25,000 such surface impoundments. At least one-half of the sites are believed to contain hazardous wastes. The survey found that virtually no monitoring of groundwater was being conducted and that 30 percent of the impoundments, or 2,455 of the 8,221 sites assessed, are unlined, overlie usable groundwater aquifers and have intervening soils which would freely allow liquid wastes to escape into groundwater.

SPILLS AND OTHER RELEASES

The problem is much broader than those incidents involving disposal of hazardous substances. When confronted with an incident of toxic chemical contamination, it is often difficult to distinguish whether it is the result of a spill, a continuing discharge, an intentional dumping, or a waste disposal site. Any legislative solution would also have to address, in addition to disposal sites, the closely related problems of spills and other releases of dangerous chemicals which can have an equally devastating effect on the environment and human health.

Frequently, these releases have resulted in the contamination of drinking water and long-term contamination of wells, in massive fish kills, air pollution, loss of livestock and food products to contaminated drinking water and feed, and the destruction of wildlife.

Spills have taken place because of transportation accidents involving pipelines, trucks, rail cars, and barges or tankers, and also non-transportation facilities such as storage tanks, holding lagoons and chemical processing plants.

Thomas Jorling, the Assistant Administrator for Water and Waste Management for the Environmental Protection Agency, testified before the Subcommittees on Environmental Pollution and Resource Protection in 1979, saying:

> * * * there are about 3,500 incidents involving chemicals per year from sources which have the potential of releasing significant quantities of hazardous substances either onto land or into water. Of these, it is estimated that about 50 percent of 1,700 spills would reach navigable waters * * * there are about 700 to 1,200 significant spills per year.

Some examples of the type of accidents that have resulted from spills and other non-waste disposal incidents include:

—PCB's, a cancer-causing insulating fluid whose manufacture is now banned, leaked from an out-of-service transformer, entered the food chain and spread through 19 states and two foreign countries. Hundreds of thousands of hogs, chickens, turkeys, and a large quantity of other foodstuffs had to be destroyed.

—One-third to one-half of the drinking water and irrigation wells in the San Joaquin Valley have been contaminated by a pesticide, DBCP. In sufficient amounts, this pesticide is known to cause sterility in workers. It is suspected also of causing cancer.

—From 1970 to 1977, the number of railroad transportation incidents involving hazardous substances increased 700 percent. Fatalities increased by 300 percent. A witness from the National Transportation Safety Board testified that 85 percent of those releases would have been prevented by the installation of relatively inexpensive safety devices.

—Portions of Lakes Ontario and Erie have been closed to commercial fishing because of chemical contamination. The taking of coho salmon, stocked throughout the lakes to encourage a viable commercial and sport fishery, is banned because of chemical contamination.

Additional studies reveal that the spread of dangerous chemicals by spills and other incidents is presently a major environmental problem in this Nation:

—A 418 page report recently released by the Environmental Protection Agency contains information on 3,076 incidents (mostly spills) involving hazardous substances.[1] These incidents were reported voluntarily to the Agency over the last two years. Of the 1,766 incidents reported in fiscal year 1979, 42 percent involved non-transportation sources, 40 percent involved transportation sources, and 15 percent involved "mystery" sources. The majority of these hazardous substance spills involved releases to groundwater, air and land. The report appears to greatly underestimate the problem.

—The Congressional Research Service of the Library of Congress recently completed a catalogue of natural resources lost or destroyed through releases of hazardous or toxic substances.[2] It is almost 250 pages long, yet the Congressional Research Service says it is an incomplete effort. All of the reported incidents are essentially anecdotes.

—In a recent report, the Department of Agriculture identified surface water basins which were contaminated by chemicals.[3] These basins included practically the entire middle South.

In a report "Objectives for the Nation", working groups sponsored by the Department of Health and Human Resources identified toxic pollution as one of the 15 priority areas for preventing disease and promoting health.

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[1] "Hazardous Materials Incidents Reported to U.S. Environmental Protection Agency Regional Offices from October 1977 through September, 1979" EPA, January, 1980.

[2] "Resource Losses From Surface Groundwater, and Atmospheric Contamination: A Catalog, by the Congressional Research Service, Library of Congress, for the Committee on Environment and Public Works, U.S. Senate, March 1980.

[3] "Program Report and Environmental Impact Statement" Soil and Water Resources Conservation Act, U.S. Department of Agriculture (Review Draft), 1980.

7

BEFORE LOVE CANAL

Long before shocking incidents at Love Canal gained wide attention and propelled the problems of inadequate hazardous chemical waste disposal into the national spotlight, other incidents involving the spilling of hazardous substances and oil gave rise to a legislative response which passed the Senate in the 95th Congress.

Hoping to prevent further oil spill accidents after the huge spills caused by the wrecks of the *Argo Merchant* and the *Amoco Cadiz*, Senators Muskie, Stafford and Chafee introduced S. 2900 in the spring of 1978 to establish a uniform regime for oil pollution liability and compensation. S. 2900 was an expansion of section 311 of the Clean Water Act, which since 1972 had covered hazardous substances as well as oil. The effects of incidents involving the release of hazardous substances convinced the Committee at that time that hazardous substances should continue to be included within the framework of cleanup, damages and liability.

Three of these incidents were the kepone contamination of the James River, the release of polychlorinated biphenyls (PCB's) into the Hudson River, and the contamination of Michigan livestock by the ingestion of polybrominated biphenyls (PBB's).

Kepone was discharged into the environment around Hopewell, Virginia, from 1966 to 1975 from two manufacturing operations. The Allied Chemical Company produced kepone, which was used primarily against potato beetles in Europe, for eight years through 1974. By the summer of 1975 several employees were stricken with several of the following symptoms: slurred speech, nervousness, tumors, liver damage, loss of memory and sterility. Although no one is known to have died from the contamination, scientists still do not know the extent of damage. Extensive medical bills have resulted from the contact with kepone.

The careless manufacturing and disposal practices also resulted in atmospheric emissions which settled on surface soils. Wastewater discharges passed through a sewage treatment plant, and contaminated the James River, which the Environmental Protection Agency says will take an amount of time from 50 years to "centuries" to clean itself. The pollution has idled a major fishing industry in Virginia because of fish contamination. Douglas Costle, the Administrator of the Environmental Protection Agency, said:

> It's estimated that the kepone discharges could have been properly controlled at a cost of $200,000. But they were not controlled. As a result, known claims against the company total more than $20 million. And the cost of cleaning up the James River has been put at roughly $8 billion—which means, as a practical matter, that it will probably never be done. Figures like these suggest that much federal regulation does pay its own way—even allowing for the uncertainties of benefit calculations.

The episode involving the contamination of the Hudson River also demonstrates the harms and costs that contamination of the environment by toxic chemicals can cause.

The General Electric Company discharged PCB's, an electric insulating fluid, into the Hudson for many years. As a result, commer-

cial fishing, which was making a comeback as a result of other pollution controls, was largely stopped. The New York State Office of Environmental Conservation has estimated that to clean up the river will cost more than $30 million. This amount, however, does not include compensation for losses, such as to the fishermen who lost their livelihood, or for the lost revenues in recreational use.

The 1973 incident in Michigan involved the contamination of cattle feed by PBB's, a fire retardant. Livestock had to be destroyed and dairy products were contaminated. It is estimated that direct losses of $100 million have resulted. But this does not include costs of health effects on the population of Michigan. Some scientists estimate that 90 percent of the residents of the State may have ingested PBB's through dairy products.

As the threat of the release of hazardous substances began to be documented, the committee in considering the oil spill liability legislation in 1978 agreed that hazardous substances should be included in any legislation dealing with oil spills. Thus, S. 2900 included hazardous substance spills within the framework of cleanup and damages liability. Uncompensated claims were to be compensated from a fund established through a fee paid by the oil industry, until a separate fund for hazardous substances was established.

The oil and hazardous substance spill liability legislation passed the Senate in September, 1978. Final resolution of differences between the House and Senate did not occur by the end of the 95th Congress.

By the end of 1978, however, the incident at Love Canal more clearly demonstrated the national problem of hazardous chemicals. A solution of broader dimensions was needed to deal with the litany of contamination incidents that was being uncovered.

LOVE CANAL

The Love Canal tragedy, the most familiar example of the dangers of hazardous substances in our society, also paints the clearest picture of just how serious the problems involving toxic chemicals can be.

In January of 1979, Michael H. Brown, a reporter for the *Niagara Gazette*, who wrote over 100 stories on Love Canal, contributed a piece on the contaminated neighborhood to the New York Times Magazine.

The following excerpt from that article, entitled "Love Canal, USA", summarizes the Love Canal chain of events:

> Sometime in the 1940's—no one knows or wants to remember just when—the Hooker Chemical Company, which is now a subsidiary of Occidental Petroleum, found an abandoned canal near Niagara Falls, and began dumping countless hundreds of 55-gallon drums there. In 1953, the canal was filled in and sold to the city for an elementary school and playground (the purchase price was a token $1), and modest single-family dwellings were built nearby. There were signs of trouble now and then—occasional collapses of earth where drums had rotted through, and skin rashes in children or dogs that romped on the field—but they were given little thought until the spring of 1978. By then, many of the homes were deteriorating rapidly and were found to be infiltrated

by highly toxic chemicals that had percolated into the basements. The New York State Health Department investigated and discovered startling health problems: birth defects, miscarriages, epilepsy, liver abnormalities, sores, rectal bleeding, headaches—not to mention undiscovered but possibly latent illnesses. In August, President Carter declared a Federal emergency. With that, the state began evacuating residents from the neighborhood along the Love Canal, as it is named after the unsuccessful entrepreneur, William Love, who built it in 1894. Two hundred homes were boarded up, the school closed and the nation got a glimpse of what Senator Daniel Patrick Moynihan called "a peculiarly primitive poisoning of the atmosphere by a firm."

But it was clearly not so peculiar. Since then, new dumping grounds have been reported in several precarious places. Under a ball field near another elementary school in Niagara Falls health officials have found a landfill containing many of the same compounds; it was discovered because the ball field swelled and contracted like a bowl of gelatin when heavy equipment moved across it. Officials have discovered, too, that Hooker disposed of nearly four times the amount of chemicals present in the Love Canal several hundred feet west of the city's municipal water-treatment facility, and residues have been tracked inside water-intake pipelines. Across town, near Niagara University, a 16-acre Hooker landfill containing such killers as Mirex, C–56 and lindane—essentially chemicals that were used in the manufacture of pest killers and plastics—has been found to be fouling a neighborhood stream, Bloody Run Creek, which flows past drinking-water wells. About 80,000 tons of toxic waste are said to have been dumped there over the years.

Still worse, as the company recently acknowledged, Hooker buried up to 3,700 tons of trichlorophenol waste, which contains one of the world's most deadly chemicals, dioxin, at various sites in Niagara County between 1947 and 1972. Investigators immediately sought to determine whether dioxin had seeped out and, indeed, the substance was identified in small quantities within leachate taken from the periphery of the Love Canal, an indication that it may have begun to migrate. There are now believed to be an estimated 141 pounds of dioxin in the canal site—and as much as 2,000 pounds buried elsewhere in the county. The Love Canal is above the city's public water-supply intake on the Niagara River but a quarter of a mile away; the other sites are closer—in one case within 300 feet—but downstream of the intake. However, the Niagara flows into Lake Ontario, which Syracuse, Rochester, Toronto and several other communities make use of for water supply. Although health officials regard the dioxin discovery as alarming, they do not yet consider it a direct health threat because it is not known to have come into contact with humans or to have leached into water supplies. Academic chemists point out, however,

> that as little as three ounces of dioxin are enough to kill more than a million people. It was dioxin, 2 to 11 pounds of it, which was dispersed in Seveso, Italy, after an explosion of a trichlorophenol plant: Dead animals littered the streets, hundreds of people were treated for severe skin lesions and 1,000 acres had to be evacuated . . .

Since the publication of this article, new events at Love Canal have raised serious concerns over the residents' health. President Carter recently authorized the temporary relocation of 800 additional families from the polluted area.

Problems like Love Canal pose a series of problem questions:

—How should the government respond?
—Who should pay for response and damages?
—Is there adequate information to determine health risks?
—Can the causes of illnesses and injuries be specifically identified?
—How broad should compensation provisions of a Federal program be?
—Who will pay for health tests, relocation costs, medical compensation and other third party damages that might arise?
—What should the statute of limitations be with respect to discovered illnesses?
—What is the best technical manner to respond to leaching chemicals and other releases?

The range of problems explored by the Committee went beyond waste disposal sites. Senator Stafford addressed these in his opening remarks at the first hearing on March 18, 1979.

> Mr. Chairman, it is important to emphasize, I think, at the outset that these hearings deal with more than just the problem of abandoned hazardous waste sites. The orphaned site problem is important, and it is justly receiving a great deal of attention. Not only are water supplies being contaminated, but untold number of innocent persons are exposed to extremely toxic and hazardous chemicals. Some places, such as Love Canal, have become environmental ghettos. But these hearings are to inquire into the universal problems caused by the release of toxics into the environment.
>
> If these hearings were to deal only with the Love Canal or Toone, Tenn., we would be neglecting the radium sites in Denver. And if we were to deal with the Denver sites as well, we would still be neglecting PCB's in the Hudson River and PBB's in Michigan. If we restrict ourselves just to the waste, we will leave a large gap because in the chemical business one man's meat is literally another man's poison. Waste from one company is feedstock to another. What we must explore is the entirety of how and why toxics are entering the environment, whether they are injuring people, and if so, how. Then we must decide whether there should be a scheme to compensate victims, and if so, for what injuries.

INADEQUATE LEGAL AUTHORITY

There is limited authority to solve these problems. Regulations promulgated in May under subtitle C of the Solid Waste Disposal

Act, which impose tough new standards for operating toxic waste disposal facilities, are expected to greatly upgrade the Nation's active toxic waste disposal sites. But the regulations do not address those situations where an owner is unknown or is unable to pay the cleanup costs, nor do they address the clean up of spills, illegal dumping, or releases generally.

In cases like Love Canal, where the disposer is known and able to pay, and where there is significant danger, the Federal Government, under the Solid Waste Disposal Act, does have authority to sue the disposer or owner of the disposal site to seek clean up. But the uncharted legal pathway will be lengthy and uncertain.

In addition to the Solid Waste Disposal Act, there is a patchwork of other existing Federal statutes which ostensibly deal with hazardous substance problems.

Section 311 of the Clean Water Act imposes liability for cleanup and mitigation of spills of oil and approximately 300 designated hazardous substances. A $35 million appropriated revolving fund is available for immediate cleanup activities and any money recovered from the spiller is returned to the fund. As of May, 1980, the fund was virtually depleted. Section 311 is triggered only by spills into navigable waters and does not cover most groundwater incidents or other releases.

Section 504 of the Clean Water Act provides authority for the cleanup and mitigation of environmental emergencies which present an imminent and substantial threat to health or welfare. A $10 million appropriated revolving fund is authorized for such actions, but no appropriations have ever been made available for this fund.

The Safe Drinking Water Act has two provisions which seek to address contamination incidents. Section 1431 provides basic emergency authority when a contaminated public water supply system presents an imminent and substantial threat to the health of citizens. Section 1442 authorizes the Environmental Protection Agency to make grants to assist States and cities in responding to emergency situations when a public water supply is threatened.

These statutes provide a legal basis for emergency response to clean up and mitigate a limited number of environmental emergencies. But in most cases, funding is inadequate or has not been made available. And more importantly there is no general Federal law establishing liability in the case of accidents or other incidents involving hazardous substances. So, even when a responsible company has been identified, recovering cleanup costs and damages can be extremely difficult or impossible. Often, whether the government is suing for cleanup costs or individuals are suing for property or personal damage, cases must be brought in State courts under laws which vary from State to State.

There is no available source of funds for the expensive remedies needed to help solve hazardous chemical contamination problems. Millions of dollars will be needed in some cases just to contain releases. For example, the State of New York and the Environmental Protection Agency have already spent over $30 million at Love Canal, largely on emergency and short-term response. The total remedial costs of Love Canal alone are expected to reach $125 milllion.

These legal gaps in responding to such incidents prompted the Committee to include three major concerns in its reported legislation:

First, provide incentive for maximum care in handling hazardous substances and for minimizing the effects of any releases by establishing strict liability for responsible parties for cleanup costs, mitigation, and third-party damages.

Second, provide a mechanism for rapid response, including an immediately available source of funding for cleanup and mitigation, when hazardous substances are released into the environment; and

Third, provide prompt and adequate compensation for injured parties.

II. Goals and Elements of New Legislation

The Environmental Emergency Response Act, S. 1480, is designed to help address many of the problems faced by society as a result of chemical contamination.

The bill is not intended to replace other laws which aim to correct a variety of toxic chemical concerns. The Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Solid Waste Disposal Act, and other statutes are only beginning to build regulatory foundations to address the wide range of toxic contamination incidents. The reported bill, S. 1480, is structured to complement these laws.

Environmental Protection Agency Administrator Douglas Costle spoke in May, 1980, about the need for new legislation:

> * * * the framework for a national program to control the wastes now being generated is rapidly falling in place * * *.
>
> * * * there is as yet one important element missing from the regulatory framework. Our current laws give us the authority needed to control the wastes now being generated, and to begin to regulate disposal sites now in use. But they do not give us the resources we need to clan up the dumpsites left by the companies that have gone out of business, or those created by outlaw dumpers. We have been forced to rely on a patchwork of authorities, which provide at best limited funds—and, in those cases where we can identify a responsible party, on the lawsuit.
>
> We have not hesitated to use these tools. We have already filed 19 lawsuits, for example, including a series of actions against Hooker Chemical. But what we need, at this point, is * * * a revolving fund that would allow us to go in and clean up hazardous waste sites first, then try to recover the costs of cleanup later.
>
> If we had a superfund a few months ago, we could have cleaned up the site in Elizabeth, N.J. * * * and each day that passes without it raises the odds that yet another dumpsite will become a source of imminent danger to public health.

Because the problem of hazardous substances in the environment is complex, the legislation seeking to rectify those problems must contain several essential elements if it is to be effective.

To achieve these goals five basic elements are included in legislation to broadly address the problems. These are:

First, assuring that those responsible for any damage, environmental harm, or injury from chemical poisons bear the costs of their actions;

Second, providing a fund to finance response action where a liable party does not clean up, cannot be found, or cannot pay the costs of cleanup and compensation;

Third, basing the fund primarily on contributions from those who have been generically associated with such problems in the past and who today profit from products and services associated with such substances;

Fourth, providing ample Federal response authority to help clean up hazardous chemical disasters; and

Fifth, providing adequate compensation to those who have suffered economic, health, or other damages.

LIABILITY

The goal of assuring that those who caused chemical harm bear the costs of that harm is addressed in the reported legislation by the imposition of liability. Strict liability, the foundation of S. 1480, assures that those who benefit financially from a commercial activity internalize the health and environmental costs of that activity into the costs of doing business. Strict liability is an important instrument in allocating the risks imposed upon society by the manufacture, transport, use, and disposal of inherently hazardous substances.

To establish provisions of liability any less than strict, joint, and several liability would be to condone a system in which innocent victims bear the actual burden of releases, while those who conduct commerce in hazardous substances which cause such damage benefit with relative impunity.

Without the bill's liability provisions, victims of a hazardous chemical incident face a difficult burden in seeking redress through the courts.

In testimony during hearings on S. 1480, several witnesses testified that victims who were poisoned by toxic chemicals faced barriers in the legal system to presenting their cases.

One example was that of Mr. Frank Kaler of Jamesburg, New Jersey, whose well was contaminated by synthetic chemicals. Mr. Kaler testified that he was "economically bludgeoned out of the courtroom" when his counsel presented the grim economic facts of appealing his unexpected low first award.

A 500-page Library of Congress Study [4], requested by Senators Stafford and Culver, and released on June 17, 1980, came to three basic conclusions on victim compensation with respect to releases of hazardous substances:

First, the legal mechanisms in the States studied are generally inadequate for redressing toxic substances-related harms, and traditional tort law presents substantial barriers to recovery.

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[4] "Six Case Studies of Composition for Toxic Substances Pollution: Alabama, California, Michigan, Missouri, New Jersey and Texas," Congressional Research Service, Library of Congress Serial No. 93–13, June, 1980.

Second, seeking compensation for pollution-related injuries is usually cumbersome, time-consuming and expensive. In the releases studied (some involving many exposures), few cases were filed and final judgments were rarely obtained.

Third, as a consequence of these difficulties, the compensation ultimately provided to injured parties is generally inadequate.

While sustaining such actions through complete litigation is difficult, the current case law is generally supportive of the imposition of strict, joint and several liability with respect to hazardous substances.

Even though relatively few of the toxic tort problems addressed in the bill have been brought into court and adjudicated until recently, the U.S. Justice Department and independent legal authorities have stated that the basis for imposing such liability currently exists.

The most analogous areas of the law are product liability and liability for abnormally dangerous activities. For example, the law of product liability imposes strict, joint and several liability on manufacturers of unavoidably dangerous products.

James W. Moorman, the Assistant U.S. Attorney General for Land and Natural Resources, said before the joint subcommittees:

> The evidence compiled through Congressional hearings on the subject of hazardous waste overwhelmingly supports the conclusion that the generation of hazardous wastes is what the law would consider to be an ultrahazardous activity. By their very nature, hazardous wastes create a high degree of risk that their release will cause substantial harm.

Another source of legal precedent for strict liability for hazardous substance disposal sites or contaminated areas is nuisance theory. Damage actions involving the maintenance of a public or private nuisance often involve a kind of strict liability standard.

An important aspect of strict liability is that it would create a compelling incentive for those in control of hazardous substances to prevent releases and thus protect the public from harm.

In April 1978, in his opening statement on hearings to establish comprehensive pollution liability and compensation legislation, Senator Edmund Muskie, then Chairman of the Subcommittee on Environmental Pollution, said that a major question was what kinds of incentives would be included for transporters and facility operators to adopt strict measures to guard against spills.

Again, on June 20, 1979, in joint subcommittee hearings to discuss the Administration's superfund proposal, Senator Muskie said to Thomas Jorling, Assistant Administrator for Water and Waste Management of the Environmental Protection Agency:

> I am not sure this legislation * * * would provide the added deterrent law to effectively discourage not only spills, but the deposit of hazardous materials in sites which are environmentally dangerous. * * * What type of deterrent is there in this fee approach?

Mr. Jorling responded:

> The basic point is this fee is not designed to be a deterrent. This fee is designed to generate revenues for the Government to respond.

> The deterrent aspect comes from the fact that if Government spends money out of that fund, there is recovery back against those who discharge, plus penalties * * *.
>
> This fee system is not designed to be a deterrent, nor is it designed to be a fee that can be construed as a right to pollute. It is liability provisions that are the deterrent.

In correcting the historic neglect of hazardous substances disposal, it is essential that this incentive for greater care focus on the initial generators of hazardous wastes since they are in the best position to control the risks. Generators create the hazardous wastes, they have more knowledge about the risks inherent in their wastes and how to avoid them, and they determine whether and how to dispose of these wastes—on their own sites or at locations controlled by others. Without a strict liability standard for generation of hazardous wastes, generators will have a strong incentive to transfer control of their wastes to others as quickly as possible—a practice whose social and environmental consequences are documented almost daily in news reports.

As Mr. Moorman testified further before the joint subcommittees:

> Society needs to insure, to the greatest degree possible, that those who control hazardous wastes throughout the whole process of disposal have the expertise and resources to handle those wastes properly. The only way society can insure this is to place on the generator of the waste the highest possible incentive to make sure that the waste is passed on to those that can fulfill these requirements. The best incentive is strict, joint and several liability * * * I should also note, that a joint and several and strict liability standard will encourage generators to remedy hazards created in the past as well as to discourage them from creating new hazards.

Several precedents exist for federally-imposed liability regimes. One Federal regulatory program with a direct and significant effect on State liability laws was the Federal Safety Appliance Act. Another program, directly overlaying State regimes with new and different Federal liability standards and remedies, is section 10(b) of the Securities Act, which creates a federally enforceable remedy for securities fraud. And finally, strict liability has already been established for cleanup costs and natural resource damages due to oil and hazardous substances spills in navigable waters under section 311 of the Clean Water Act, as well as general strict liability schemes for damages and cleanup costs for oil spills under the Deep Water Port Act and title III of the Outer Continental Shelf Lands Act Amendments of 1978.

For releases authorized under Federal permit programs, the bill would allow the use of the Funds to respond to harm or to a threat of harm. In the case of a permitted release, however, the Fund, and injured third parties as well, would not seek recovery under the liability provision of S. 1480. The Fund and injured parties would seek recovery under other State or Federal statutes or under common law.

ESTABLISHMENT OF A FUND

Present statutes do not provide adequate compensation for those affected by chemical contamination, and are inadequate to respond to

releases of hazardous substances. To meet these needs, the bill creates a special fund.

Three sections of the Clean Water Act authorize funds for cleanup of chemicals released into navigable waters and mitigation of damages. These are:

—Section 115, authorizing $15 million for removal and disposal of hazardous materials from navigable waterways and critical port and harbor areas;

—Section 311, authorizing a $35 million fund (replenishable by appropriation and recovery) to clean up and mitigate spills affecting navigable waters or natural resources; and

—Section 504, authorizing a $10 million replenishable fund to clean up pollution creating an "imminent and substantial endangerment to the public health or welfare."

Aside from the inherently limited response authority in each of these sections, each also is hampered by limits of appropriations.

Sections 115 and 504 have never been funded. Section 311 received additional funding of $13 million in 1979, but due to the number of spills and slow recovery rate in court, that fund is currently depleted.

Also, these sections of the law are not well constructed to deal with abandoned and inactive sites or with new cases of "midnight dumping" onto the ground, or with general releases into the environment.

The Solid Waste Disposal Act mandates safe disposal of hazardous wastes in the future, and creates a regulatory structure intended to track all hazardous waste streams. But it does not provide funds to clean up improper dumping, and its authority is limited to hazardous substances which are wastes.

This situation causes an array of problems. In the absence of a fund, a financially solvent perpetrator must be found, sued, and collected from before any money is available for any purpose. This obstacle is compounded by the high cost of identifying chemicals in the environment and tracing them to their source, by a lack of records for old dumpsites and other releases, the difficulty in determining the assets of responsible parties, by the inability of small firms to pay, and by the likelihood that out-of-court settlements will often be smaller than damages if the perpetrator can wait out the government and victims.

In addition, none of the existing authorities compensates victims. Nor often do third parties have access to the Federal courts, leaving a victim to seek compensation under State tort laws often applying negligence or nuisance theories. The victim must bear the cost and burden of proving technically complex causes and effects.

Actions by State agencies are sometimes haphazard and are hampered by a lack of funds. In many cases, States have shown unwillingness to assume the expense of cleanup without a matching Federal commitment; in others, States have been unwilling to hold responsible major industries which are economically significant. In addition, chemical pollution lawsuits require technical expertise and commitments of time that few States have shown willingness to finance.

Thus, existing systems of response and compensation are not adequate.

The argument in favor of creating a fund was well stated by the Interagency Task Force on Compensation and Liability, composed of representatives of various Federal agencies convened to study this problem. It reported as follows:

> The principal difficulty with existing federal programs is that, even when taken together, they fall far short of a comprehensive sttrategy for dealing with the damages caused by hazardous materials. Even the most ambitious programs (such as Price-Anderson and Section 311) are constrained in some way. Victims of hazardous materials releases face a denial of compensation under federal statutory schemes due to the various funds' limits on the hazardous substances covered, the environmental pathway (water, air or land) for damage, the type of incident or the type of damage.
>
> The present system's array of narrowly defined programs may create administrative problems as well. Typically the funds that exist are adjuncts to other regulatory prrograms and are limited by the scope of specific licensing activities. As a result the goal of compensating the injured may be complicated by questions of the regulatory jurisdiction of the various federal agencies. For example, when an oil spill occurs it would be necessary to track down the source of the spill before either the Deepwater Port Liability Fund, the Trans-Alaska Pipeline Liability Fund or the Offshore Oil Spill Pollution Fund would be liable. Such excursions into causation prior to compensation undermines one of the purposes behind a strict liability fund system.

Aside from those sections of the Clean Water Act, there are several precedents for the establishment of a fund. These include the Offshore Oil Spill Pollution Fund, the Fisherman's Contingency Fund, the Trans-Alaska Pipeline Authorization Act, the Deepwater Ports Act, the Surface Mining Control and Reclamation Act, the Black Lung Benefits Reform Act, the Jones Act's provision for merchant seamen, and the Federal Employee's Compensation Act for railroad workers.

The bill authorizes a 6-year fund. Over that period, a total of $4.085 billion would be derived from fees and appropriations. In the first year, fees and appropriations would be $285 million; in the second year, $600 million; and in each of the third through sixth years, $800 million. Two-thirds of the annual revenues would be reserved for government response, including removal and remedy actions, restoration of natural resources, epidemiological studies, victim registries, and other health effects surveys. One-third of annual revenues would be available to compensate third-party damages.

In the third through sixth year, $534 million will be available annually for government response. A fund providing $534 million annually will permit government response only to the most significant releases. At this level of funding, response will not be possible at a large number of releases posing imminent or substantial threats to public health or the environment. The Environmental Protection

Agency estimates that in the first 4 years, S. 1480 will finance removal (emergency assistance only) at 600 hazardous waste disposal sites, remedy of the problems at only 235 of these sites, and response to approximately 2,800 spills or other releases. At some 360 sites, the need for remedy will be ascertained, but will have to be deferred for lack of funds.

Even these projections substantially overstate the level of government response the Fund can actually afford. The Agency's estimates do not include permanent relocation, epidemiological studies, victim registries, other health studies, or the costs of operating and maintaining long-term remedial measures. Estimates indicate these omitted items may require annual Fund expenditures ranging from $100 million to $345 million by the sixth year, reducing even further the number of cases to which the fund will be able to respond. In addition, the estimates may overstate the level of government response because the costs of remedy are assumed to actually decline over the four years from $3 million to $2.2 million per site, and the impact of inflation is ignored.

The Fund created by S. 1480 may not be adequate to remedy sites which are already known and which the Agency has at least tentatively concluded need remedial action. The Agency is investigating some 5,790 sites identified in the past year. To date, it has determined that State or Federal response actions are required at 111 sites and tentatively concluded that such actions are needed at an additional 231 sites. These determinations are based on inspections of fewer than one-fifth of the 5,790 known sites. The number of sites which contain hazardous wastes is estimated to total at least 50,000.

Estimates based upon available information indicate that third-party damages could require between $150 million and $300 million annually, depending on the incidence of damages, the number of claims honored by liable parties, the number and size of catastrophic releases, and the costs of claims adjudication. Obviously such estimates at this time could be subject to error.

The use of the Fund for third-party damages was limited to actual medical expenses paid within six years of the date of discovery of the injury, and two years' lost wages or salary from the date the loss began. In addition, separate provision was made for agricultural and fishery losses.

If the amount set aside in the bill for third-party damages is too large, the Fund administrator has authority to reduce fees and appropriations in the next year. If the amount is too small, monies may be borrowed from the Treasury, but since they must be paid back from future revenues, the Fund administrator will be forced to ration claim payments in later years, based on hardship to the claimant and other criteria.

The legislation would also establish a second Federal fund which would assume the liability from owners and operators of hazardous waste disposal facilities which were permitted under Subtitle C of the Solid Waste Disposal Act and closed in accordance with the regulations under that Act.

That Act requires that site owners prove their financial capability to pay for the repair of those facilities which release a hazardous sub-

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stance after closure. The Agency has deferred the implementation of this provision because site owners have been unable to secure private insurance establishing such financial responsibility. This has proved to be a serious stumbling block to the establishment of the desperately needed new capacity to dispose of hazardous substances.

This legislation would transfer such liability only if the permitting authority certifies that a facility closure was in compliance with the Solid Waste Disposal Act permit and regulations and that hazardous substances were not likely to migrate off-site.

This revolving post-closure liability fund of $200 million would be financed by a fee imposed on hazardous wastes.

SOURCES OF REVENUES FOR THE FUND

The Committee concluded that the Fund should be supported by a combination of fees on industry and appropriations. Fees provide most of the Fund's revenue. This decision raised two additional issues:

On what portions of industry should a fee system be centered? and,

How much should the assessment on industry be?

A fund based only on appropriations would not be in the public interest. Taxpayers too often are asked to remedy problems they do not help create. Relying on general revenues to clean up past industrial mistakes could be interpreted by some as a public policy precedent, implying that the longer it takes for problems to appear, the less responsible those who cause the problem are for the solution.

Further, a Fund derived exclusively from appropriations would subsidize those generators and users of hazardous substances who, while benefiting economically, have exposed society to the risks of commerce in hazardous substances.

Also, to assure the billions of dollars needed to deal with hazardous chemical problems are available, while meeting the equally desired goals of restrained Federal spending, a fee on those who benefit from the commercial and industrial practices which expose society to hazardous substances is especially appropriate to these related national concerns.

The economic impact of an industrial fee system will not be disruptive.

In a September 25, 1979, letter to the Environment and Public Works Committee Chairman, Jennings Randolph, Environmental Protection Agency Administrator Douglas Costle said that virtually all of the costs of the fee system would be passed on to consumers of products made from the chemicals subject to the fee.

"In an industry with a historic annual average of six to eight percent profits and equally high rates of growth," Mr. Costle wrote, "fees of less than two percent will, at most, produce a slight reduction in the rate of growth."

In determining how industrial fees should be levied, the Committee, in the two years of deliberation on the bill and its predecessor, moved away from imposing fees on wastes and hazardous end-products, and instead approved a system which imposes fees on the relatively few basic building blocks used to make all hazardous products and wastes. The initial fee proposal in S. 1480 as introduced would have involved

the collection of fees from at least 260,000 generators of hazardous substances, assuming fees would not be imposed on several hundred thousand very small firms. It was determined that such a system would have significantly increased government paperwork on industry, been difficult to defend in court, been impossible to administer, involved long delays before implementation, resulted in potential significant economic inequities, and induced industrial behavior contrary to the environmental purposes of the bill.

The imposition of a fee on the building blocks of all hazardous substances has several advantages. It raises more revenue without creating significant economic impact in the national economy than a fee on wastes and products because it spreads costs more broadly throughout the chain of commerce of hazardous products and wastes. Collection of such a fee also would be simple. It would be levied on fewer than 1,000 sources, instead of at least 260,000 and on just 46 basic building blocks (primary petrochemicals, inorganic raw materials and petroleum oil).

Also, because a fee on feedstocks can be passed on to customers, it does not single out the chemical industry's profits as its source of revenue. Virtually all hazardous wastes and substances are generated from these primary petrochemicals, inorganic raw materials or petroleum oil. The costs of a fee imposed at this early step in the industrial chain of production, distribution, consumption and disposal will be more evenly passed along to all industrial sectors which produce and consume hazardous substances and generate hazardous wastes. The fee system utilizes the efficiency of the marketplace to distribute the fees through the chain of commerce rather than relying upon a large Federal bureaucracy to select out who should be subject to what fee.

Seven-eights of the annual revenues of the Fund, exclusive of recoveries, is to come from fees, and one-eighth from appropriations. These appropriations were authorized for three reasons: (1) they will help assure startup of the program by allowing cleanup and third-party compensation to begin without the delays that could occur while procedural fee regulations are being promulgated and the fees collected; (2) the appropriations process will assure scrutiny of the use of the Fund by the Administration and the Congress; and (3) appropriations provide a safeguard against court tests which could halt the start of cleanup and compensation.

The initial allocation of fees between petrochemicals, inorganics, and oil approximately reflects the ratio of hazardous wastes generated from each. Wastes representing 92 percent of annual hazardous waste generation, after correction for weight bias, were found in surveys to be in a ratio of approximately three to one, organic (petrochemicals) to inorganic. In addition, fees would be collected from crude oil to reflect the high incidence of waste oils found in hazardous waste disposal sites. This results in the following allocation of fees (in 3 years, when the Fund is authorized at $800 million annually): Primary petrochemicals, 65 percent of the total fees, or $450 million; inorganic raw materials, 20 percent, or $150 million; and petroleum oil, 15 percent, or $100 million. These fees would be collected on imports and exports as well as domestic production. Federal appropriations would make up the additional $100 million.

The fees would be phased in over a 3-year period. After 3 years and biannually thereafter, both the categories paying the fee and the actual amount paid may be administratively adjusted to reflect the empirical degree of hazard based on the payout experience of the Fund. However, any such adjustment cannot exceed the statutory limits on fees which are designed to preclude significant economic impacts. After 4 years, a report will be made to the Congress to evaluate statutory changes that could better reflect who and how much should be paid into the Fund according to the pay out experience of the Fund.

To facilitate rapid implementation, the first year fees are specified for each substance in the reported legislation. The second and third year fees are included in this report. The specific fee rates are based on production volumes. After 3 years, any changes in the fees will be established by public rulemaking, thus allowing those affected industries to participate. A number of provisions are included in the fee system to assure an equitable fee which avoids unintended economic impacts, including: a provision which allows only one fee collection on any given quantity, statutory maximums which the fees cannot exceed, and exclusions from the fees for primary petrochemicals and inorganic raw materials which are used as a source of fuel, produced solely as a by-product of pollution control and used commercially, or derived from recycled material.

In testimony before the joint subcommittees, the Administration identified three criteria to apply in establishing a legislative fee system: "First was equity, a nexus to the problem. The second was administrative complexity in the collection system. Can you penetrate a very complicated commercial system and do it efficiently without creating the need for a huge bureaucracy to apply rule-making and guidance, and interpretations to collect the fee? The third feature was economic impact on the basic systems of production that exist in this country in oil and chemicals."

These three criteria were used to develop a fair fee system. In addition, the Committee considererd the speed with which fees could begin to be collected and the legal defensibility of any fee system. The economic impact, with the precautions included in the legislation, will be minimal. The annual fund is small compared to the Gross National Product, and since the fee is not indexed to inflation, the impact will lessen with time. The Congressional Budget Office, in reviewing the fee system embodied in S. 1480, agreed with the conclusion of the economic analyses carried out for the Committee by the Environmental Protection Agency: "The effect of the fees on prices and production volumes of final products is small," and, "the fees should have at most a very small effect on GNP, the price level, or unemployment."

The American chemical export business has done extremely well in recent years. Through the first half of 1979, exports were running at an annual rate of more than $16 billion, a 39 percent increase over the previous year's pace.

Concern was expressed by some industries about the possible effects of an industrial fee on the exports of American chemicals. The Congressional Budget Office has determined that the maximum possi-

ble decline in petrochemical profits, if U.S. companies found they could not pass on the fees from an $800 million annual fund to export consumers, would be $67.5 million from the multi-billion dollar industry. However, both the Congressional Budget Office and the Environmental Protection Agency analyses find that it is highly unlikely that the fees could not be passed on. The impact of fees appears miniscule compared to oil price changes and changes in the international exchange rates. In recently resisting European tariffs, the U.S. chemical industry has argued that some American competitive advantage will still exist after oil price decontrol due to the greater efficiencies in U.S. plants. The Committee has made adjustments in the fee system in two areas where analyses suggest economic impacts could have been troublesome, the copper and fertilizer industries.

GOVERNMENT RESPONSE MECHANISM

In a joint subcommittee field hearing in Niagara Falls, New York, Lois Gibbs, the president of the Love Canal Home Owners Association, testified:

> Neither the state nor the federal agencies who could help were responsible for the situation (Love Canal). And neither wanted to take financial responsibility for cleaning it up.

Because present law does not provide adequate authority for emergency actions involving hazardous chemicals a major goal of this legislation is to provide clear authority to act and an adequate response to emergencies caused by toxic and hazardous chemical emergencies.

The response mechanism in section 311 of the Clean Water Act, which established a hazardous substance spill control program, was a result of congressional concern that the public health and environment might not be protected from chemical spills. The Committee has learned, however, that a response to spills into or affecting navigable water is just not enough. With such narrow authority for response, the questions of what to do about abandoned waste sites, midnight dumping and other harmful releases would go unanswered. Major questions would also remain about just how much to do at hazardous waste sites. Is containment enough? How long is monitoring of a site necessary? Are both removal and remedy of abandoned sites possible within cost limitations?

The Chemical Transportation Emergency Center (Chemtrec) is a service provided by the Chemical Manufacturers Association to provide immediate advice for accidents involving the transportation of chemicals. A government emergency response system was needed not only for transportation spills, but for releases of all kinds. The thrust of the Environmental Emergency Response Act is to provide for immediate emergency response actions and application of the best engineering techniques for containment and remedy.

Therefore, the reported legislation would require that the appropriate agency be notified of any release of a hazardous substance into the environment by any person in charge of a vessel or facility from which a release occurs. Failure to report such releases could result in a fine or imprisonment.

In the event of a release of a hazardous substance, the legislation gives the President the authority to provide necessary remedial action, including any emergency action essential to protect the environment or human health or welfare. The President is directed to revise the National Contingency Plan, presently in existence pursuant to section 311 of the Clean Water Act, in order to create clear response procedures under the requirements of the reported legislation.

COMPENSATION

In determining ways to pay for the costs borne by the victims of chemical contamination, any decision must weigh the enormous scope of the problem and the potential immensity of these costs.

Several studies, discussed above, have shown that economic losses are substantial and that the rate of compensation for victims is extremely low. Sizeable losses due to out-of-pocket medical expenses, lost wages, lost recreational businesses revenues and contaminated agricultural and seafood products have occurred. A Library of Congress study has also concluded that, ". . . damage to natural resources in the United States by toxic chemicals is substantial and enduring."

The need for compensation must be balanced with the fiscal problems that would result if a fee-based fund were required to compensate for all damages due those who have been or might become victims of such losses.

With regard to the medical expenses of victims, the bill expresses the following priorities:

—That injured victims be assured they receive immediate medical attention;

—That when no liable source can be identified or the liable source is not financially viable, chronically injured victims not be denied treatment;

—That government-supplied diagnostic and treatment services be made available whenever possible.

As reported, S. 1480 covers certain losses, but it also places limitations on compensation. One requirement is that claims against the Fund for damages must be brought within three years of the discovery of the loss or of enactment of this Act, whichever is later. A second limitation is that, with the exception of food production losses (described elsewhere), the Fund will reimburse victims only for out-of-pocket medical expenses incurred within six years of discovery of the illness or injury and 100 percent of lost wages in the first year following the loss and 80 percent of lost wages in the second year.

Another limitation is that third-party damages resulting from exposure completed prior to January 1, 1977, would not be compensible from the Fund, nor subject to the liability provisions of this bill, if the injured party knew of his injury before that date. A person exposed to a hazardous substance before January 1, 1977, could seek compensation from the Fund for medical expenses and lost income within the limits of the bill, if the injury did not become apparent until after January 1, 1977, but any recovery from the liable party would have to be under common law.

The Fund also pays for expert witness fees, health studies, and diagnostic examinations.

DISCUSSION OF MAJOR PROVISIONS

Definition of Hazardous Substances

The provisions of the bill apply to discharges, releases, and disposal of hazardous substances. Thus, the characterization of a substance as hazardous under section 2(b)(13) is important for several reasons: first, in most cases that is the key to government response and the use of the Fund; secondly, release of designated hazardous substances invokes the requirement for notice to the government under section 3(a)(3) and (4); and thirdly, discharge, release or disposal of designated hazardous substances applies the liability under section 4 of the bill for removal, remedial action, and damage costs.

There are two basic mechanisms for substances to be designated as hazardous for purposes of the bill. The first under section 2(b)(13)(A) through (E) is through the operation of the statute itself. By the terms of those provisions those substances listed as hazardous or toxic under certain other Federal laws are incorporated by reference and upon the date of enactment of this bill such substances become statutorily defined as hazardous substances for purposes of this bill. And the release of any of them or any constituent of them invokes the notice requirements and response provisions and any costs of removal or remedial action or any damages are subject to the liability provisions of the bill.

Section 2(b)(13) of S. 1480 defines as a hazardous substance all those substances which are listed under sections 311 and 307 of the Clean Water Act; section 112 of the Clean Air Act; subtitle C of the Solid Waste Disposal Act; and section 7 of the Toxic Substances Control Act. As substances are added to these lists they would be automatically designated as hazardous substances for purposes of S. 1480.

Following are lists of substances which will be hazardous substances under S. 1480 upon enactment.

At the present time 297 substances have been listed as hazardous substances under section 311 of the Clean Water Act, as follows:

Acetaldehyde
Acetic acid
Acetic anhydride
Acetone cyanohydrin
Acetyl bromide
Acetyl chloride
Acrolein
Acrylonitrile
Adipic acid
Aldrin
Allyl alcohol
Allyl chloride
Aluminum sulfate
Ammonia
Ammonium acetate
Ammonium benzoate
Ammonium bicarbonate
Ammonium bichromate
Ammonium bifluoride
Ammonium bisulfite
Ammonium carbamate
Ammonium chloride
Ammonium chromate
Ammonium citrate
Ammonium fluoborate
Ammonium fluoride
Ammonium hydroxide
Ammonium oxalate
Ammonium silicofluoride
Ammonium sulfamate
Ammonium sulfide
Ammonium sulfite
Ammonium tartrate
Ammonium thiocyanate
Ammonium thiosulfate
Amyl acetate

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Aniline
Antimony pentachloride
Antimony tribromide
Antimony trichloride
Antimony trifluoride
Antimony trioxide
Arsenic disulfide
Arsenic pentoxide
Arsenic trichloride
Arsenic trioxide
Arsenic trisulfide
Barium cyanide
Benzene
Benzoic acid
Benzonitrile
Benzoyl chloride
Benzyl chloride
Beryllium chloride
Beryllium fluoride
Beryllium nitrate
Butyl acetate
n-Butyl phthalate
Butylamine
Butyric acid
Cadmium acetate
Cadmium bromide
Cadmium chloride
Calcium arsenate
Calcium arsenite
Calcium carbide
Calcium chromate
Calcium cyanide
Calcium dodecylbenzenesulfonate
Calcium hypochlorite
Captan
Carbanyl
Carbofuran
Carbon disulfide
Carbon tetrachloride
Chlordane
Chlorine
Chlorobenzene
Chloroform
Chlopyrifos
Chlorosulfonic acid
Chromic acetate
Chromic acid
Chromic sulfate
Chromous chloride
Cobaltous bromide
Cobaltous formate
Cobaltous sulfamate
Coumaphos
Cresol
Crotonal dehyde
Cupric acetate
Cupric acetoarsenite
Cupic chloride
Cupric nitrate
Cupric oxalate
Cupric sulfate
Cupric sulfate ammoniated
Cupric tartrate
Cyanogen chloride
Cyclohexane
24–D Acid
24–D Esters
DDT
Diazinon
Dicamba
Dichlobenil
Dichlone
Dichlorobenzene
Dichloropropane
Dichloropropene
Dichloropropene-Dichloropropane Mixture
2.2–Dichloropropionic acid
Dichlorvos
Dielarin
Diethylamine
Dimethylamine
Dinitrobenzene
Dinitrophenol
Dinitrotoluene
Diquat
Disulfoton
Diuron
Dodecylbenzenesulfonic acid
Endosulfan
Endrin
Epichlorohydrin
Ethion
Ethylbenzene
Ethylenediamine
Ethylene dibromide
Ethylene dichloride
EDTA
Ferric ammonium citrate
Ferric ammonium oxalate
Ferric chloride
Ferric fluoride
Ferric nitrate
Ferric sulfate
Ferrous ammonium sulfate
Ferrous chloride
Ferrous sulfate
Formaldehyde
Formic acid
Fumaric acid
Furfural
Guthion
Heptachlor
Hexachlorocyclopentadiene
Hydrochloric acid
Hydrofluoric acid
Hydrogen cyanide
Hydrogen sulfide
Isoprene
Isopropanolamine dodecylbenzenesulfonate
Kelthane
Kepone
Lead acetate
Lead arsenate
Lead Chloride
Lead fluoborate
Lead fluoride
Lead iodide
Lead nitrate
Lead stearate
Lead sulfate

Lead sulfide
Lead triocyanate
Lindane
Lithium chromate
Malathion
Maleic acid
Maleic anhydride
Mercapatodimethur
Mercuric cyanide
Mercuric nitrate
Mercuric sulfate
Mercuric thiocyanate
Mercurous nitrate
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethylamine
Monomethylamine
Naled
Naphthalene
Naphthenic acid
Nickel ammonium sulfate
Nickel chloride
Nickel hydroxide
Nickel nitrate
Nickel sulfate
Nitric acid
Nitrobenzene
Nitrogen dioxide
Nitrophenol
Nitrotoluene
Paraformaldehyde
Parathion
Pentachlorophenol
Phenol
Phospene
Phosphoric acid
Phosphorus
Phosphorus oxychloride
Phosphorus pentasulfide
Phosphorus trichloride
Polychlorinated biphenyls
Potassium arsenate
Potassium arsenite
Potassium bichromate
Potassium chromate
Potassium cyanide
Potassium hydroxide
Potassium permanganate
Propargite
Propionic acid
Propionic anhydride
Propylene oxide
Pyrethrins
Quinoline
Resorcinal
Selenium oxide
Silver nitrate
Sodium
Sodium arsenate
Sodium arsenite
Sodium bichromate
Sodium bifluoride
Sodium bisulfite
Sodium chromate
Sodium cyanide
Sodium dodecylbenzenesulfonate
Sodium fluoride
Sodium hydrosulfide
Sodium hydroxide
Sodium hypochlorite
Sodium methylate
Sodium nitrite
Sodium phosphate, dibasic
Sodium phosphate, tribasic
Sodium selenite
Strontium chromate
Strychnine
Styrene
Sulfuric acid
Sulfur monochloride
2,4,5–T acid
2,4,5–T amines
2,4,5–T esters
2,4,5–T salts
2,4,5–TP acid
2,4,5–TP acid esters
TDE
Tetraethyl lead
Tetraethyl pyrophosphate
Thallium sulfate
Toluene
Toxaphene
Trichorfon
Trichloroethylene
Trichlorophenol
Triethanolamine dodecylbenzenesulfonate
Triethylamine
Trimethylamine
Uranyl acetate
Uranyl nitrate
Vanadium pentoxide
Vanadyl sulfate
Vinyl acetate
Vinylidene chloride
Xylene
Xylenol
Zinc acetate
Zinc ammonium chloride
Zinc borate
Zinc bromide
Zinc carbonate
Zinc chloride
Zinc cyanide
Zinc fluoride
Zinc formate
Zinc hydrosulfite
Zinc nitrate
Zinc phenolsulfonate
Zinc phosphide
Zinc silicofluoride
Zinc sulfate
Zirconium nitrate
Zirconium potassium fluoride
Zirconium sulfate
Zirconium tetrachloride

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At the present time 67 categories of chemicals have been designated as toxic pollutants under section 307 of the Clean Water Act, as follows:

Acenaphthene
Acrolein
Acrylonitrile
Aldrin/Dieldrin
Antimony and compounds*
Arsenic and compounds
Asbestos
Benzene
Benzidine
Beryllium and compounds
Cadmium and compounds
Carbon tetrachloride
Chlordane (technical mixture and metabolates)
Chlorinated benzenes (other than dichlorobenzenes)
Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers)
Chlorinated naphthalene
Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
Chloroform
2-chlorophenol
Chromium and compounds
Copper and compounds
Cyanides
DDT and metabolites
Dichlorobenzenes (1,2-,1,3-, and 1,4-dichlorobenzenes)
Dichloroethylenes (1,1- and 1,2-dichloroethylene)
2,4-dichlorophenol
Dichloropropane and dichloropropene
2,4-dimethylphenol
Dinitrotoluene
Diphenylhydrazine
Endosulfan and metabolites
Endrin and metabolites
Ethylbenzene
Fluoranthene
Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dischloroisopropyl) ether, bis(chloroethoxy) methane and polychlorinated diphenyl ethers)
Halomethanes (other than those listed elsewhere; includes methylene chlorid methylchloride, methylbromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane)
Heptachlor and metabolites
Hexachlorobutadiene
Hexachlorocyclohexane (all isomers)
Hexachlorocyclopentadiene
Isophorone
Lead and compounds
Mercury and compounds
Naphthalene
Nickel and compounds
Nitrobenzene
Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
Nitrosamines
Pentachlorophenol
Phenol
Phthalate esters
Polychlorinated biphenyls (PCBs)
Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzaanthracenes, and indenopyrenes)
Selenium and compounds
Silver and compounds
2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethylene
Thallium and compounds
Toluene
Toxaphene
Trichloroethylene
Vinyl chloride
Zinc and compounds

At the present time six chemicals have been designated as hazardous air pollutants under section 112 of the Clean Air Act, as follows:

Asbestos
Beryllium
Mercury
Vinyl chloride
Benzene
Radionuclides

At the present time there are no chemicals which have been listed as toxic under section 7 of the Toxic Substances Control Act.

Under section 3001 of the Solid Waste Disposal Act a waste is listed as hazardous for any one of the following three reasons:

—First, the Administrator of the Environmental Protection Agency has determined that it meets one of the statutory characteristics

*The term "compounds" shall include organic and inorganic compounds.

of hazardous waste in the definition under section 1004(5) of the Solid Waste Disposal Act;

—Secondly, the Administrator has determined that the waste has been found to be fatal to humans in low doses (or has a low animal oral, inhalation or dermal LD/LC 50) or otherwise is capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness.

—Finally, the Administrator has determined that the waste contains any of some 400 acutely hazardous chemicals, unless after considering such factors as the concentration of those chemicals in the waste, the amount of waste generated, and the potential of the chemicals to migrate from the waste, the Environmental Protection Agency concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly managed.

Under section 2(b)(13)(C) of the reported bill, any material which is listed as a hazardous waste under section 3001 (including listed process wastes) or identified as a hazardous waste pursuant to the characteristics published under section 3001 is a hazardous substance under S. 1480.

At the present time the Environmental Protection Agency has promulgated rules providing for the identification and listing of hazardous waste at 40 CFR Part 261 (45 FR 33119, May 19, 1980). These regulations must be referred to to determine the hazardous wastes and their constituents which are hazardous substances for purposes of S. 1480. Any material listed as a hazardous waste or hazardous constituent is a hazardous substance for the purposes of S. 1480 regardless of whether it is a waste.

It should be noted that any substance or material for which regulation is specifically suspended by Act of Congress under the Solid Waste Disposal Act is excluded from designation as a hazardous substance for the purpose of S. 1480, notwithstanding the presence in such substance of any hazardous or toxic chemical.

Thus drilling muds and brines, which will have been excluded from regulation by the 1980 amendments to section 3001 of the Solid Waste Disposal Act, are not hazardous substances under S. 1480.

The second basic mechanism for designating hazardous substances under section 2(b)(13)(F), is the addition of substances just for the purposes of this bill under section 3(a)(2).

Section 3(a)(2) authorizes the President to designate as hazardous substances those compounds, elements, mixtures, and solutions which may present substantial danger to public health and welfare and the environment. This provision essentially authorizes the President to augment the existing lists of hazardous substances derived from existing statutes (see, section 2(b)(13)(A), (B), (C), (D), and (E)). The language of this provision has a lower threshold for designation than that currently in place in section 311(b)(2) of the Clean Water Act. This is intended to afford the President broad discretion in designating substances which may adversely affect public health or the environment.

Section 3(a)(2) also authorizes the President to establish for each additional hazardous substance so designated a single quantity which,

if released, discharged, or disposed of, must be reported pursuant to section 3(a)(3)(A). This does not in any way imply or require that such quantities be determined for any other hazardous substances as defined in section 2(b)(13) (A) through (E).

The provision intentionally omits from the requirement to determine "reporting" quantities any reference to harm or hazard. A single quantity is to be determined for each hazardous substance, and this single quantity requires notification upon release into any environmental medium. It would be virtually impossible to determine a single quantity applicable to all media while at the same time linking such quantity to any subjective concept of harm.

It is essential that such quantities be relatively simple for those subject to notification requirements to understand and comply with. Since releases in such quantities trigger notification requirements, but do not, in and of themselves, give rise to other liabilities under this Act, the Presidents' broad discretion to select quantities will not unfairly burden those persons subject to the Act.

In determining reportable quantities under this paragraph, the President may consider any factors deemed relevant to administering the reporting requirements or the President's other responsibilities under this Act. Administrative feasibility and practicality should be primary factors. In addition, the President may revise such regulations from time to time if under-reporting or over-reporting is occurring under existing regulations.

In addition, under section 2(b)(13)(G) a "hazardous substance" is defined generically as follows:

> any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

This generic definition is included because hazardous substances characteristically are not included on a governmental list until after they have demonstrated their danger by killing or injuring people or causing significant environmental damages. The actual listing of a substance lags behind release and exposure by years and sometime decades. This happens even though the persons responsible for manufacturing or handling the substances usually know, either through experience or scientific studies, of the substance's dangerous propensities.

Examples of substances added to lists only after they caused harm, even though there was reason to know of their dangerous qualities earlier, include asbestos, kepone, and organic mercury. Some substances have not been included on one of the relevant lists even after they have, in fact, caused grievous injuries.

On April 11, 1980, Senator Stafford wrote the Environmental Protection Agency to ask whether certain substances were included on any of the lists referenced in subparagrapahs (A) through (F) of S. 1480.

The chemicals that he asked about were selected because they had, in fact, caused documented injuries. Dibromochloropropane, for example, is known to have caused sterility in workers, yet it is not included on any of the referenced lists.[5] It is for this kind of example that subparagraph (G) is included in the bill.

Subparagraph (G) describes substances which are harmful to humans and includes them within the scope of S. 1480 whether they are included on a regulatory list or not. The definition was intentionally made broad in order to assure that any substance or agent which causes disease in humans, whether it is an element, chemical, pathogen, or mixture, is included. Of course, if a substance is determined as "hazardous" only by virtue of section 2(b)(13)(G)—that is, it meets the subparagraph (G) definition, but is not a designated hazardous substance under subparagraphs (A) through (F)—the consequences under this bill are less than if it has been on one of the lists. Under S. 1480 as reported, the Fund is available for government response and claims for damages caused by a substance considered hazardous under section 2(b)(13)(G) but cannot collect its costs under the special liability provisions of the bill. Instead, the Fund and any private damage action must rely on common law or other tort which would otherwise apply.

If, however, the President has responded to a release of such a substance as an imminent or substantial danger to public health or welfare under section 3(c)(1), the Fund and any private damage party may use section 4 to recover. The ability of the President to respond to substance defined as hazardous under section 2(b)(13)(G), however, should make response to such substances under a declaration of imminent or substantial danger less necessary or common.

Under section 2(b)(13), petroleum, including crude oil and including fractions of crude oil which are not otherwise specifically listed or designated as hazardous substances under subparagraphs (A) through (F) of the definition, is excluded from the definition of a

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[5] The reply is reprinted as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., April 15, 1980.

HON. ROBERT T. STAFFORD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STAFFORD: This is in response to your letter of April 11, 1980 requesting information on whether several chemical substances are included on lists compiled pursuant to certain environmental statutes.

None of the chemical substances listed in your April 11 letter are included on lists compiled pursuant to section 307 or section 311 of the Federal Water Pollution Control Act. No chemical substances have had actions taken against them under section 7, the "Imminent Hazard" section, of the Toxic Substances Control Act (TSCA). However, the following chemical substances, along with their Chemical Abstract Service (CAS) number, are listed in the inventory required by section 8(b) of TSCA:

ONA—Orthonitroaniline [88–74–4]
DBCP—dibromochloropropane [96–12–8]
PBB's—polybrominated biphenyls [several numbers]
Isobutyronitrile [78–82–0]
Hexachlorobicycloheptadiene [3389–71–7]

The listing of chemical substances which will be defined as hazardous waste under section 3001 of the Resource Conversation and Recovery Act will be promulgated by the end of April. We would be happy to inform you of the status of the chemical substances under section 3001 at that time.

Finally, one substance you inquired about, hexachlorobicycloheptadiene is on a list of 43 chemical substances under assessment for listing under section 112 of the Clean Air Act.

I hope this letter has responded fully to your inquiries. Please let me know if you need any further information.

Sincerely yours,

SUSANNE L. WELLFORD,
Acting Director,
Office of Legislation.

hazardous substance. The reported bill does not cover spills or other releases strictly of oil. It is also important to note that natural gas, liquified natural gas (LNG), and high BTU synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas) are not considered hazardous substances within the purposes of S. 1480.

Liability

Section 4 of the reported bill provides that—

(1) the owner or operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility or site at which such hazardous substances are disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal, treatment, or transport for disposal or treatment by any other party or entity of hazardous substances owned or possessed by such person, at facilities or sites owned or operated by such other party or entity and containing such hazardous substances, and

(4) any person who accepts any hazardous substances for transport to disposal or treatment facilities or sites selected by such person,

from which a hazardous substance is discharged, released, or disposed of or from which any pollutant or contaminant is released resulting in action under section 3(c)(1) of the Act, shall be jointly, severally, and strictly liable for all removal costs and specified damages.

S. 1480 provides incentives to all involved with hazardous substances to assure that such substances are handled with the utmost of care. Consistent with the concept of strict liability, persons can not escape liability by "contracting away" their responsibility or by alleging that the incident was caused by the act or omission of a third party. The only exception to this liability scheme arises where the person can prove that the discharge, release, or disposal was caused solely by an act of God or an act of war. This liability scheme essentially codifies the common law liability standard applicable in cases involving hazardous substances and materials. This liability standard is intended to induce potentially liable persons to voluntarily mitigate damages rather than simply rely on the government to abate hazards.

The specific items of removal costs and damage which may be recovered under the authority of S. 1480 are enumerated in section 4(a) (1) and (2). The purpose of those provisions, taken together with the rules for proving medical and natural resource losses, is to calculate the economic losses caused by a release as closely as possible. Since S. 1480 is designed to assure that products reflect their true costs, the bill is at its most efficient when such actual costs are calculated to the penny. The converse of this is that certain items of damage which are not economic in nature are not recoverable under the provisions of S. 1480. The most notable of these is pain and suffering.

The specific items recoverable under the provisions of S. 1480 are as follows:

(1) all costs of removal or remedial action incurred by the United States Government or a State, and any other costs or expenses incurred by any person to remove a hazardous substance as the terms "remove" or "removal" are defined in section 311(a)(8) of the Clean Water Act; and

(2) all damages for economic loss or loss due to personal injury or loss of natural resources resulting from a discharge, release, or disposal of a hazardous substance, including—

(A) any injury to, destruction of, or loss of any real or personal property;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from personal injury or from injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources;

(F) all out-of-pocket medical expenses, including rehabilitation costs or burial expenses, due to personal injury; and

(G) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

It should be clear, as under section 311, if an innocent third party's property is damaged pursuant to authorized removal or remedial operations those damages are part of the cost of removal or remedy payable from the fund and chargeable to the owner or operator.

The general rule is that to hold the person factually responsible for damage to another liable, a victim must show "fault" or negligence. But for abnormally dangerous activities, the law imposes a rule of strict liability, under which the victim is not required to show that the person who injured him was guilty of moral misconduct.

The rule of strict liability applies to "abnormally dangerous" activities, and a variety of other fields as well. The most notable of these other areas is products liability, but also included are intentional torts (such as trespass, assault, battery, and intentional infliction of mental distress). In addition, the Congress and State legislatures have codified the rule of strict liability in a variety of other fields as well. These include oil pollution, nuclear incidents, and spills of hazardous substances, S. 1480 extends the statutory affirmation of strict liability found in these specialized statutes to hazardous substance incidents generally.

S. 1480 declares the manufacture, use, transportation and disposal of hazardous substances to be abnormally dangerous activities for the purposes of this Act and, therefore, subject to a rule of strict liability. For some types of these abnormally dangerous activities, there are specific exclusions from the strict liability regime of S. 1480. In those areas, the Fund or injured third parties must rely on common law or other statutes for recovery.

Strict liability has been imposed either judicially or legislatively for a variety of activities. At one time strict liability (or "no fault" liability) was the prevailing way of allocating loss. One reason for imposing strict liability was laid out in 1866 in the English case of *Rylands* v. *Fletcher*—

> We think the true rule of law is that the person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape.

The rule of *Rylands* v. *Fletcher*—strict liability for ultra hazardous activities—has been accepted and applied throughout the United States, under one name or another. Incidents to which it has been applied include the transportation of hazardous substances; the spraying of hazardous substances; the emission of noxious gases; the impoundment of slimes; and the keeping of explosives and flammables.

One other major area where a strict liability regime applies is products liability, where manufacturers and sellers are held strictly liable for damages caused by a product sold in a "defective" condition. The "defect" may include a failure to warn of the dangers associated with the product, even where the warnings would not have reached the ultimate consumer. An illustrative application of the rule was the tragic poisoning of a New Mexico family. In that case, the "consumers" of the product were the children of a janitor who had obtained feed corn from a granary. The corn was fed to the families' hogs, which were slaughtered and eaten. The grain—intended to be used as seed, not food—had been treated wth an organic mercury compound to prevent loss due to spoilage or disease. The children were stricken by organic mercury poisoning and suffered permanent, irreversible loss of sight, speech, and hearing. The court held that failure to warn of the specific consequences of ingestion of the mercury compound constituted a defect, although under the facts of the case this information would not have been communicated to the father, much less the children.

POLICY CONSIDERATIONS

Strict liability is applied to these and other cases for a variety of reasons. Chief among these are questions of fairness and equity. One additional purpose of S. 1480's strict liability scheme is to assure that the costs of injuries resulting from defective or hazardous substances are borne by the persons who create such risks rather than by the injured parties who are powerless to protect themselves. Most risks are not inevitable. On the contrary, many can be minimized or eliminated altogether through the exercise of greater care. By holding the factually responsible person liable, S. 1480 encourages that person—whether a generator, transporter or disposer of hazardous substances—to eliminate as many risks as possible.

But some risks cannot be eliminated. The question then is whether the loss should fall on the victim or the person who created the risk. The issue is really one of fundamental fairness.

The approach of S. 1480 was well expressed in *Green* v. *General Petroleum Company* (a 1928 California case) where the court held oil drilling in a residential area to be an ultra hazardous activity for which strict liability should be invoked:

> Where one, in the conduct and maintenance of an enterprise lawful and proper in itself, deliberately does an act under known conditions, and, with knowledge that injury may result to another, proceeds, and injury is done to the other as the direct and proximate consequence of the act, however carefully done, the one who does the act should, in all fairness, be required to compensate the other for the damage done.

In some of these cases the choice is not between an innocent victim and a careless defendant, but between two blameless parties. In such cases the costs should be borne by the one of the two innocent parties whose acts instigated or made the harm possible.

The advantage of this approach is not only that it is fair, but that it will cause the economy to operate better. Strict liability is, in effect, a method of allocating resources through choice in the market place.

The most desirable system of loss distribution is one in which the prices of goods accurately reflect their full costs to society. This therefore requires, first, that the cost of injuries be borne by the activities which caused them, whether or not fault is involved, because, either way, the injury is a real cost of these activities. Second, it requires that among the several parties engaged in an enterprise the loss be placed on the party which is most likely to cause the burden to be reflected in the price of whatever the enterprise sells.

Two benefits flow from imposing strict liability in this manner:

(1) the adverse impact of any particular misfortune is lessened by spreading its cost over a greater population and over a larger time period; and

(2) social and economic resources are more efficiently allocated when the actual costs of goods and services (including the losses they entail) are reflected in their prices to the consumer.

OTHER STRICT LIABILITY SCHEMES

S. 1480 represents an attempt to fill voids left by a variety of other Federal strict liability statutes which respond to and compensate the victims of hazardous substance releases. Most of these statutes are single purpose, concerned only with a narrow class of victims or a narrow class of substances. These other statutes include the following:

Section 311 of the Federal Water Pollution Control Act

Section 311 of the Federal Water Pollution Control Act establishes a revolving fund to finance the Federal cleanup of spills into navigable waters of oil or designated hazardous substances. The response includes restoration of natural resources. Although the fund is maintained through appropriations, dischargers are strictly, jointly and severally liable for all costs incurred during cleanup. Section 311 does not, however, include third party damages.

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Outer Continental Shelf Lands Act

Unlike section 311 of the FWPCA, the Outer Continental Shelf Lands Act Amendments of 1978 create fund and liability schemes designed specifically to compensate third parties for damages caused by oil production on the Outer Continental Shelf (OCS).

a. *Offshore Oil Spill Pollution Liability and Compensation.*—This Fund is available to finance cleanup costs and compensate injuries caused by discharges from certain vessels and offshore facilities operating on the OCS. Compensable economic losses include:

—Injury to, destruction of, or loss of use of real or personal property;
—Injury to, destruction of, or los of use of natural resources;
—Loss of profits caused by damage to real property, personal property or natural resources; and
—Loss of tax revenue for 1 year due to injury to real or personal property.

Payments may be made initially from the Fund (which is maintained by a 3 cent per barrel fee on oil obtained from the OCS), but the responsible parties are strictly, jointly and severally liable. If they do not step forward, the Fund may sue them as a subrogee.

b. *Fisherman's Contingency Fund.*—The OCS Amendments also provide a special compensation mechanism for a select class of injured parties, commercial fishermen.

This Fund covers "actual and consequential damages, including loss of profits, due to damages to, or loss of, fishing gear by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development or production activities." The Fund's efforts are coordinated with Department of the Interior regulations aimed at color coding, stamping or labeling of oil production equipment used in the OCS.

The Price-Anderson Act

The Price-Anderson Act amended the Atomic Energy Act to add the equivalent of a Federal liability and compensation scheme for damages caused by those serious "nuclear incidents" designated by the Nuclear Regulatory Commission as "extraordinary nuclear occurrences" The coverage is broad, as a "nuclear incident" may potentially include "any occurrence . . . causing . . . damage . . . arising out of . . . the radioactive, toxic, explosive or other hazardous properties . . ." of nuclear materials. The Price-Anderson Act imposes strict liability for all offsite public damages caused by an extraordinary nuclear occurrence.

The Trans-Alaska Pipeline Safety Act

The Trans-Alaska Pipeline Safety Act (TAPS) establishes a liability and compensation mechanism comparable to that of the Outer Continental Shelf Lands Act. The law imposes a strict liability on those handling Alaskan oil for damages caused if it is spilled. The regime applies not only to ruptures of the pipeline, but accidents involving a release of pipeline oil at United States ports or other such terminals.

As in the OCS Act, a fund is available to compensate third parties if the spiller either cannot or will not. The Fund may then sue the spiller as a subrogee. The liability standard remains one of strict liability whether the plaintiff is the fund or the original injured party.

Deepwater Port Act

The OCS Lands Act pattern is also replicated in the Deepwater Port Act: the spiller of deepwater port oil is strictly liable, but a Fund is available to compensate parties if the responsible party cannot or will not.

State Strict Liability Laws.—States have responded to the specific problems of hazardous substance releases by the enactment of a variety of laws. Responding to a request from the Senate Committee on Environment and Public Works, the Library of Congress identified twelve states which had enacted laws recognizing a right of recovery for damages suffered by private persons. Most of these expressly impose strict liability. Those states were: Alaska, California, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, North Carolina, Oregon, South Carolina, and Washington. Pennsylvania also expressly imposes strict liability, though its statute is apparently restricted to escapes of oil from pipelines which pollute wells.

Federal Causes of Action

Out of respect for the Federal system created by the Constitution, the Congress is generally reluctant to create a cause of action found on Federal law which might duplicate causes founded on State law. Indeed, it is primarily for this reason that the cause of action established by this bill is restrained in the types of incidents covered, the types of damages which are compensable, the classes of victims protected and the like. Nevertheless, the Congress has not hesitated to enact remedial legislation conferring a Federal cause of action where there was a clear need. The Library of Congress identified thirty examples of such laws based on a brief review of the United States Code, but some of the notable examples include the following:

Fair Credit Reporting Act.—A consumer credit reporting agency which fails to comply with the act is liable under a Federal cause of action to the consumer for not only actual injuries resulting from the failure, but for attorney's fees and court costs if the action is successful.

Securities Acts of 1933 and 1934.—A person who acquires a security (e.g. stock or mutual fund shares) because of false representations in the registration statement filed with the Securities and Exchange Commission (or some other corporate statements) has a Federal cause of action against the registrate.

Clayton Antitrust Act.—A person injured because of a violation of this act enjoys a Federal cause of action under which treble damages, attorney's fees and court costs are recoverable.

Taft-Hartley Act.—A person injured by an unfair labor practice, whether a union's or an employer's, has a Federal cause of action for recovery of damages.

Magnuson-Moss Warranty Act.—A consumer damaged by the failure of a supplier, warrantor or service contractor to comply with the provisions of the Act has a Federal course of action.

These statutes and the others identified by the Library of Congress include only those Federal laws which authorize money damages, not the many others under which injunctive relief may be granted. In addition, these are statutes where the purpose was not to supplement Federal enforcement (e.g. by creating "private attorneys general"),

but to compensate victims. Generally, however, they share a common quality with S. 1480: they respond to a need for remedial legislation required because State systems have been unable to provide redress for injured persons.

Effective Dates of Liability Provisions

Section 4(n) specifies how claims for certain damages occuring before the date of enactment will be handled under S. 1480. Costs of removal (cleanup and containment) are not affected by this provision, nor are any damages associated with continuing releases.

Section 4(n)(1) provides that neither the liability scheme in S. 1480 nor the Fund can be used to recover for natural resource and property damages when the damages and the release of hazardous substances causing such damages occurred prior to enactment of S. 1480. This provision allows for recovery only of prospective natural resource and property damages. The bill does not preclude use of the remedies which were available for recovery of damages prior to enactment. Damages which are being repaired as part of a cleanup action under the Fund are not affected by this provision, and the Fund may recover for such cleanup expenditures.

Section 4(n)(2) provides that the liability scheme of S. 1480 and payment from the Fund would not be available for recovery of damages for medical expenses and personal injury-related loss of income for a claimant whose exposure to a hazardous substance release was completed prior to January 1, 1977, and who discovered a resultant injury or illness prior to January 1, 1977. Such a claimant could seek such damages under common law or other tort law. The intent of this provision is to limit claims for personal injury to those when the exposure and the discovery of the resultant injury or disease have both occurred before a specific point in time.

The January 1, 1977, date was chosen to assure that certain well-known hazardous substance disposal occurrences, such as Love Canal, would be covered by the liability scheme of S. 1480. The date also approximates the enactment of the Resource Conservation and Recovery Act amendments to the Solid Waste Disposal Act, which provide for implementation of strategies to control the transportation, storage, and disposal of hazardous wastes.

Section 4(n)(3) provides that the liability provisions of S. 1480 are not available to a claimant seeking damages whose exposure to a hazardous substance release was completed prior to January 1, 1977, but who did not discover a resultant illness until after January 1, 1977. A claimant is not precluded from recovery of medical expenses and personal injury-related loss of income, profit, or impairment of earning capacity from the Fund, but would not be able to sue the responsible party under the causes of action provided in the bill. The Fund would seek recovery of any compensation under the existing common law or other applicable statutory law. The claimant could also pursue the liable party under such existing remedies.

This provision specifies that the costs of permanent and temporary relocation of residences and providing of alternative water supplies are considered removal or cleanup costs. Such costs are not affected by the effective dates in this subsection.

This provision does not preempt or change in any way the liability of any individual under other existing law for damages or losses resulting from hazardous susbtance releases.

Apportionment Factors

Section 4(f)(1) provides for modifying the rule of joint and several liability by limiting liability under certain limited conditions. Any such limitation may be considered only following determination of liability under section 4(a). Limitation occurs where a liable person can demonstrate by a preponderance of the evidence that his contribution to the discharge, release, or disposal can be distinguished or apportioned. Such person must also demonstrate by the preponderance of the evidence that his contribution was not a significant factor in causing or contributing to the discharge, release, or disposal, or the damages resulting therefrom. If the liable person establishes these two prerequisites, the court must limit such liable person's liability to that portion of the release or damages to which such person contributed.

Any person found jointly and severally liable with one or more other persons is entitled, after paying into the fund of the court the amount for which he is held liable, to seek contribution from such other persons to the extent of their proportionate liability. In addition, if a person held liabile alleges that the release, discharge, or disposal or the consequent damages are due in whole or in part to the acts or omissions of a third party, such liable person retains all rights against such third party, and may join such party in an action under section 4 or section 6(c). In any action under section 4(f)(1) or (2), the claimant is not to be considered an indispensable party.

Section 4(f)(4) provides a list of factors the court may consider in limiting or apportioning lability under section 4(f)(1) and (2). This section provides guidance for the courts in (1) limiting the liability of a person who is an insignificant factor in a release to his proportionate share of the costs or damge or (2) in apportioning liability among those significant factors in causing a release, who are, under section 4, to be held jointly and severally liable for costs or damages.

As between a claimant and a releaser, this provision does not authorize the limitation of liability of a person who is a significant factor in a release; the ordinary rule of joint and several liability applies to those who are a significant factor in a release. However, courts have exercised their equitable powers to occasionally limit liability even for significant contributors, and this discretionary power is likely to continue to be exercised. In addition, under section 4(f)(2), or in the ordinary course of litigation after judgment has been rendered, some courts may have applied the rule of *pro tanto* contribution in apportioning liability among several tortfeasors. Section 4(f)(4) provides the courts with guidance on factors to consider in more equitably apportioning liability, rather than relying on the *pro tanto* rule, as well as in limiting liability in the situations discussed above.

The factors which may be considered include the following:

(1) The ability of the party to demonstrate that his contribution to the release can be distinguished;

(2) The amount of hazardous substance involved. Of course, a small quantity of a highly toxic material, or above which releases

or makes more dangerous another hazardous substance, would be a significant factor;

(3) The degree of toxicity of the hazardous substance involved;

(4) The degree of involvement of the person in the manufacture, treatment, transport, or disposal of the hazardous substance; and

(5) The degree of cooperation between the person and the Federal, State, or local government in preventing harm to public health or the environment from occurring from a release. This includes efforts to mitigate damage after a release occurs.

Medical Expenses Causation

Section 4(c), the medical causation provisions of S. 1480, attempt to adapt the system of proof developed originally for use with accidents to one more suitable for proof of disease. The effect of the bill's provisions is to prevent a victim-plaintiff from being thrown out of court on procedural grounds when there appears to be merit to a claim.

The causation provisions are among the most discussed and closely examined of any in the bill. Indeed, they were revised and perfected throughout the course of S. 1480's consideration. Even though the provisions were often examined and often rewritten, they were included in the reported legislation because a review of toxic substances complaints and litigation leads to the inescapable conclusion that changes need to be made.

GENERAL PROVISIONS OF SECTION 4(C)

First, section 4(c) specifically authorizes the admission of medical and scientific studies in a court of law. Such evidence (e.g. tests on laboratory animals or microorganisms) has been excluded by some courts. The practical consequence of such exclusion is to wrongfully deny the plaintiff the opportunity to prove his case. Such evidence sometimes does not meet the high standards of probative value preferred by courts, but it may be the only evidence available. Such evidence ordinarily ought to be allowed to be considered by the trier of fact, whether the defendant is seeking to eliminate it on the basis of irrelevancy or on the basis of the waste of time, confusion or prejudice grounds.

Second, the bill provides that when the plaintiff has shown a reasonable likelihood that his disease resulted from release of the toxic substance, a presumption is created in his favor. This presumption does not guarantee that the plaintiff will win nor does it place on the defendant the "burden of disproof". However, the presumption does assure that the plaintiff will not be thrown out of court on purely procedural grounds. The burden of proof remains with the plaintiff, as under existing law, but the procedural advantage which the law confers on the defendant is eliminated.

BACKGROUND

The American judicial system is accustomed, by and large, to dealing with questions of cause in the context of accidents, not diseases. Accidents are dramatic, time-definite events for which there is a clear

and immediate relationship between cause and effect. In contrast, diseases develop over time and may fail to manifest themselves until distant from the cause. Moreover, diseases sometimes result from a combination of causes, not just one. This is not to say that the cause of disease is not provable; it is. The problem is that rules evolved in the context of broken bones or violent explosions are often inadequate to deal with the long-latency diseases. This view is shared by many legal and scientific commentators.

> The case studies also indicate that plaintiffs in toxic pollution suits may have substantial difficulty in proving that a particular exposure to a pollutant was the cause in fact of an injury. The case studies reinforce the notion that such problems of proof can be significant barriers to recovery, both in current litigation and in litigation that may arise upon the manifestation of any latent health effects.
>
> Six Case Studies of Compensation for Toxic Substances Pollution: Congressional Research Service, Library of Congress (June, 1980).

Over and over, scientists prove to their satisfaction that cause and effect are related by virtue of their strong statistical association. For example, a certain lung disease develops in persons exposed to a chemical and not in those not exposed. This may be either an 100 percent relationship or of some lesser degree, but high enough to give the scientist confidence in his position. However, most courts tend to reject statistical testimony as "hearsay" or the like. Courts are in error in rejecting statistical evidence. It is of the highest quality and entirely acceptable to scientists. Further, no issue is being finally determined on this basis. There will be other evidence on the issue presented to the jury. Many experts, in testifying as to etiology, rely upon statistics, whether or not they acknowledge it or are even aware of it. A few courts have expressly allowed statistics.

> *Toxic Torts*, Tort Actions for Cancer and Lung Disease Due to Environmental Pollution, The Association of Trial Lawyers of America.

It is only occasionally possible to demonstrate cause and effect between a toxic substance and a specific health condition. An example where this direct relationship exists is asbestosis. In order to have asbestosis, a person must have been exposed to asbestos. Such relationships are a rare phenomenon, however, since most health effects of toxic substances are not specific. Most conditions caused by exposures to toxic substances, as examples, liver cancer, miscarriage, or spontaneous abortion could also occur in populations not exposed. It is necessary, therefore, to make presumptions of causal relationships based upon statistical relationships and epidemiological evidence. The incidence of miscarriage and spontaneous abortion of those living in the Love Canal area was beyond that which could be expected in the general population. Thus a presumption of cause can be made.

We agree with the approach taken in . . . S. 1480. It should again be stressed that proof of direct causation may not be available, but presumption of cause can be made.

Dr. John Romani, Former President, American Public Health Association.

Many of the toxic substances that have been involved in recent pollution incidents are of relatively recent origin. Their toxic properties and their harmful effects on human health, especially the long-range effects, have not yet been fully explored, and therefore it has not been possible to establish safe tolerance levels with absolute certainty. Even the methods for detecting and measuring the presence of the substance in the water, the air, and the ground and in human and animal tissue had first to be developed before the danger could be assessed. In several instances, realization of the pernicious nature of the chemical has resulted in voluntary or mandatory discontinuation of production and elimination of existing stocks from the chain of commerce and consumption.

Traditionally, proof of actual harm has been required as a basic condition for recovery under the tort law; on the other hand, there are good reasons for relaxing that requirement or even for shifting the burden of proof on the theory that one who introduced a new manmade substance into commerce or into the environment must make sure that it does not carry an unreasonable risk of harm. The necessary research to determine possible harmful effects and safe levels should come before release; if it is omitted, the resulting uncertainty can reasonably be charged to the producer or the polluter or to both.

American Bar Foundation Research Journal, Spring 1979.

Producing the evidentiary showing required to sustain the substantive proof of legal causation is an undertaking of no small magnitude. Logically, to prove causation, the plaintiff must be able to (1) isolate the harm-causing substance, (2) trace its pathway of dispersal from the polluter to the victim, and (3) show the etiology of the harm-causing substance. Without extensive scientific data these elements of causation cannot be firmly established. But introducing scientific studies—especially a full scale epidemiological study—does not guarantee success in proving causation.

Assuredly, the defense will produce experts who can challenge the techniques of the study and the conclusions drawn from the data compiled. In this endeavor to address issues which often lie at the interface of scientific truth and reasonableness under tort law, a court may retreat from wrestling with scientific probabilities and uncertainties and choose to balance the prospective harm to human health against the social and economic value of the pollutant. In deferring to the practicalities of local economic conditions, courts may put to one side complex, technical scientific data and assumptions about the formation of mixtures, the syner-

gistic effects of pollutants, the problem of joint polluters or the proof of causation itself. This refusal to consider scientific issues is especially likely when the experts disagree.

Harvard Journal on Legislation:

A Proposal for the Administrative Compensation of Victims of Toxic Substance Pollution: A Model Act (June, 1977).

PRECEDENT FOR MEDICAL CAUSATION PROVISIONS

Shifting presumptions are not uncommon in the law when dealing with unusual situations. The issue is whether, as a matter of policy, a presumption ought to apply to a specific set of facts. Some courts and some statutes have already applied not only a presumtion in circumstances covered by S. 1480, but a much more powerful presumption: one which goes not to procedural matters, but to the actual burden of proof.

One line of cases applying a presumption of cause are those dealing with cancer caused by trauma. In a typical case, a plaintiff receives a blow (or sometimes a succession of blows) to a point on the body where a cancer later develops. According to one commentator, the line of such cases began over a century ago and includes over 100 decisions. One court explained the standard of proof as follows:

> We concede that in the great majority of cases such testimony ordinarily is necessary because of the seeming absence of connection between a particular accident and a claimed resulting injury. But in other cases involving special and peculiar circumstances, medical evidence, although highly desirable, is not always essential for an injured employee to make out a prima facie case, especially if the testimony is adequate, undisputed and unimpeached. Thus where, as in the instant case, injury appears in a bodily member reasonably soon after an accident, at the very place where the force was applied and with symptoms believed testimony to the contrary, a natural inference that the injury, whatever may be the medical name, was the result of the employment. Absolute certainty is not required in any case. If the reasonable probabilities flowing from the undisputed evidence disclose a progressive course of events beginning with an external accident in which each succeeding happening including the injury appears traceable to the one that preceded it, medical evidence is not essential for an injured employee to make out a prima facie case.
>
> An inference, if rational and natural, based on proven facts will stand even though not supported by expert medical opinion.

Another field in which a presumption of cause has been applied for chemically induced diseases is workers' compensation. Some States (and for coal miners, the Federal government as well) have adopted a rule of presumptive causation. It is quite common for lung disease in a firefighter to be presumed to have been caused by occupational

exposure, just as a coal miner suffering from coal workers' pneumoconiosis can recover under the Federal Bluck Lung program. Similarly some courts permit recovery when the worker has been able to show only that it was "probable" that exposure had caused the disease. The types of workers to whom liberalized rules of proof have been extended include fire fighters mentioned earlier exposed to smoke and fumes; wool dyers exposed to analine dyes; a roofer exposed to tar and asphalt fumes; and other workers exposed to benzene or to fumes containing xylol and synthetic resins.

SPECIFIC PROVISIONS OF SECTION 4(C)

In response to the inadequacies of the current system, the reported bill provides the following:

For the limited purpose of recovering out-of-pocket medical expenses and rehabilitation costs, an injured party may utilize the methods of proof and evidence contained in section 4(c). To recover for other injuries (or for costs other than out-of-pocket medical and rehabilitation expenses, an injured party must utilize the methods of proof and evidence ordinarily applied by the courts in his or her jurisdiction.

Paragraph (1) of section 4(c) states what the claimant must prove in order to recover: that there was a release of a hazardous substance; that the defendant was liable for the release; that the release caused or contributed to the claimant's injury; and that his or her medical expenses were incurred in the treatment of the injury or disease. The claimant may be assisted in establishing his or her case by utilizing the presumption created in subsection (c)(3)(A). To invoke this presumption, the claimant must introduce enough evidence to permit a trier of fact to conclude, first, that the claimant had been exposed for a sufficient period of time or in sufficient quantity, to a hazardous substance in the release for which the defendant is liable under this Act; and, secondly, that there is a "reasonable likelihood" that the exposure causes or contributes to a disease or injury of the sort complained of. A plaintiff who meets this burden will benefit from a presumption that he has made a sufficient case for the burden of going forward to shift to the defendant. This provision does not affect the burden of proof, which remains with the plaintiff under rule 301 of the Federal Rules of Evidence. The presumption, once created, is intended to be conclusive against a motion to dismiss before a defendant has presented counterproof.

Subsection (c)(2) permits the use of certain types of medical or scientific evidence in proof of the causal relationship. This is included because some courts have held that, as a matter of law, animal studies, tissue studies, and other types of evidence described in the subparagraph are not probative on the issue of disease causation in humans. Of course, a court must always make the evidentiary determination of whether a specific item of evidence is sufficiently probative to be admitted. This paragraph does not lessen the obligation of the court to do this. It is difficult in any event for the Congress to control how a court will consider evidence. The paragraph does, however, represent the Congressional conclusion that animal studies, tissue studies, micro-

organism studies and the like are, as a class, relevant. Moreover, in cases involving toxic or hazardous substances, courts should, under this paragraph, admit evidence which might be excluded in other kinds of cases on the grounds of prejudice, confusion, or waste of time. Often the practical consequence of excluding such relevant evidence on these grounds is to deny the plaintiff an opportunity to prove his case. The policy in favor of admitting these types of evidence under this paragraph should be interpreted broadly. The Committee concluded, however, that this intent should be expressed in legislative history rather than statutory language in order to avoid unintended damage to areas of the law not within the scope of this bill.

Persons alleging injury as a result of a hazardous substance release are to have access to, and have the right to bring before a court as evidence, any potentially relevant information gathered by the President in the course of investigations, monitoring, surveys, testing, or other information-gathering undertaken to identify the existence and extent of a release, or threat of a release, the hazardous substances involved, the source of such substances, and the danger to public health or welfare or to the environment under section 3 of the reported bill or under other authorities. Such persons alleging injury are to have access to, and have the right to bring before a court as evidence, any epidemiological studies, information from diagnoses, long-term health effects studies, and information from registries maintained or developed under section 6(a)(1)(L) of the bill.

Indemnification Provision

Section 4(i) provides that no idemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer from the owner or operator of a facility, or from a person who may be liable for a release, to any other person the liability imposed under section 4. This subsection does not apply, however, to a transfer in a bona fide conveyance of a facility or site (1) between two parties not affiliated with each other in any way, (2) where there has been an adequate disclosure in writing consistent with section 3(a)(4)(C) of the Act of all facts and conditions (including potential economic consequences) material to such liability, and (3) to a transferor who can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with such facility or site.

Nothing in section (4)(i) is intended to prohibit the purchase of insurance by common carriers to cover the liability imposed by that section, nor is it intended to prohibit agreements among common carriers or between common carriers and shippers by which one or several parties agree to indemnify the indemnitee for losses incurred as a result of liability imposed by section 4.

Pesticide Exclusion From Liability and Claims on Fund

The authorities in the bill for removal and remedial action necessitated by a hazardous substance release would apply to problems caused by pesticide releases, whether or not such releases were in

accordance with existing Federal or State law. However, under section 4(k), no person or State, or the Federal government, may seek recovery under the liability provision of the bill for damages or removal costs resulting from the field application of pesticides registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act. The prohibition in section 4(k) is a limitation only upon the liability provisions of this bill; it does not bar any person from seeking recovery under other law, such as existing tort law or common law.

Similarly, section 6(a)(4) prohibits using monies in the Fund to pay claims for personal injury or lost income resulting from the field application of a registered pesticide. This prohibition does not apply to payment of capital losses and losses of income by agricultural producers and processors and to commercial fishermen and fish and seafood processors under section 6(a)(1)(N).

In the course of its deliberations on the bill, the Committee reviewed a substantial body of evidence indicating that injuries to humans and damages to natural resources and food from pesticide releases are widespread.[6] In some cases, these injuries and damages can be traced to spillage, leakage, or improper disposal of pesticides, their residue, and wastes.

The exclusion covers only liability for "field application" of a pesticide. This is intended to mean the use of a pesticide generally in accordance with its purpose. It is not intended that failure to comply with the Federal Insecticide, Fungicide, and Rodenticide Act be a basis for invoking liability for pesticide application under this bill, or that compliance with that Act be made a defense in federal or state court under other laws.

Under these provisions, persons alleging injury or lost income (other than agricultural or fishing income covered by section 6(a)(1)(N)) due to harm by pesticide application must seek remedies other than those provided under sections 4 and 6 of the bill.

However, the prohibition on use of the fund is a narrow one, covering only those releases which are "field applications" in accordance with the purposes of the product. Claimants who are injured by spilling, dumping, disposal, or leaking of pesticides, whether intentional or accidental, would have recourse to the Fund and section 4 liability provisions under this provision. Under the claims procedure with respect to this subsection, the claimant must provide documentation of the nature of the injury and the source of the release alleged to have caused the harm. Upon occasion, it may be difficult or impossible for a claimant to show that the source of a pesticide exposure was a spilling, dumping, disposal, or emission other than a field application. In such

[6] Some of the sources used by the Committee are: "Hazardous Materials Incidents Reported to U.S. Environmental Protection Agency Regional Offices from October, 1977 through September, 1979"; EPA Oil and Special Materials Control Division, January, 1980; "Compensation for Victims of Water Pollution," Committee on Public Works and Transportation, U.S. House of Representatives, May 1979; "Environmental Contaminants in Food," Congress of the United States, Office of Technology Assessment, December 1979; "Six Case Studies of Compensation for Toxic Substances Pollution Alabama, California, Michigan, Missouri, New Jersey, and Texas," prepared by the Congressional Research Service of the Library of Congress for the Committee on Environment and Public Works, U.S. Senate, June, 1980; "Damages and Threats Caused by Hazardous Materials Sites," U.W. Environmental Protection Agency, Oil and Special Materials Control Division, February, 1980; Hazardous and Toxic Waste Disposal, hearings of the Committee on Environment and Public Works, U.S. Senate, March 28 and 29, May 18, June 20, 21, 22, and 29, July 19 and 20, and September 6 and 7, 1979.

situations, the Fund shall have the burden of showing as a condition of denying benefits, that an application was the most likely source of the pesticide release.

Fertilizer Exclusion From Definition of Release

Section 2(b)(16) excludes "normal field application of fertilizer" from the definition of the types of releases into the environment otherwise covered by the bill.

Certain feedstocks used to produce fertilizer (nitric acid, sulfuric acid, phosphoric acid, anhydrous ammonia) are hazardous substances as defined by the bill, and certain fertilizer products may be listed as hazardous substances as well. Because such products may be hazardous, their release into the environment would bring the owner or operator of the facility from which the release occurred under the notice and penalty provisions of section 3 and the liability provisions of section 4, and could trigger government response under section 3 and payment of claims under section 6.

Under this exclusion, however, the "normal field application" of fertilizer is not a "release" as defined in the bill. The applicator of the fertilizer is not subject to the notification and liability provisions, and the government does not have authority to respond or pay claims.

The term "fertilizer" includes those products identified in the Standard Industrial Classification Manual (OMB, 1972 edition) as SIC Code Nos.: 1474, 1475, 2873, 2873112, 2874, 2874185, 28193, 2810922, and 2819331. The term "normal field application" means the act of putting fertilizer on crops or cropland, and does not mean any dumping, spilling, or emitting, whether accidental or intentional, in any other place or of significantly greater concentrations or amounts than are beneficial to crops.

Federally Permitted Release

Adoption of an express Federal liability mechanism for releases pursuant to certain Federal permit systems seemed inappropriate at this time. Such a proposition was particularly troublesome for permits under section 402 of the Clean Water Act because the Congress had excluded them from the Act's section 311 liability provisions in 1978. The rule of common law is that compliance with a permit is not a defense to liability. Moreover, the Congress has never said or suggested that a Federal permit amounts to a license to create threats to public health or the environment with legal immunity. However, in view of the large sums of money spent to comply with specific regulatory programs, liability for federally permitted releases ought to be determined based on the facts of each individual case. Therefore, the reported bill authorizes response to federally permitted releases, but requires costs to be assessed against the permit holder under the liability provisions of other laws, not S. 1480.

Section 4(l) of the bill preserves the enforcement provisions of the regulatory laws. Permitted releases have some potential for causing harm and that in some emergency situations it will be difficult to distinguish between a permitted release and other sources. The President,

using the Fund, is expressly authorized to respond to problems caused by federally permitted releases. Further, the Fund would be available to pay response costs and damages covered by this bill. The Fund in recouping such costs, or any private damage actions, must rely on other law—common law or Federal or State Statutory law—in lieu of the liability provisions of section 4. The determination of exactly what liability standards, defenses, or other rules apply will be made on a case-by-case basis pursuant to regimes other than that of S. 1480.

The defined term "federally permitted release" (section 2(b)(18)) is a key element in the treatment of these releases under this bill. For purposes of this bill, it includes actions by the appropriate Federal agencies or under Federally approved State programs. Where the term "legally enforceable" is used in section 2(b)(18), to qualify for exemption from liability for any federally permitted release, the relevant terms of such permit must be legally enforceable.

Following is a discussion of the releases encompassed by the "federally permitted release" definition. These releases are excluded from the liability and notification provisions of this legislation.

The Committee continues to recognize the difficulty of marking clearly where the spill response programs of section 311 and of the reported legislation apply and where the general discharge regulatory/permit programs of section 402 apply. This issue was central to an amendment to Section 311 of the Clean Water Act enacted in 1978 and the federally permitted release provisions of the reported bill preserve that Amendment and the rulemaking taken by the Environmental Protection Agency to carry it into effect.

Because of the broadened scope of the reported bill, section 2(b)(18) contains other similar clarifications regarding pollution control programs under the wetlands protection program of section 404 of the Clean Water Act, the Clean Air Act, subtitle C of the Solid Waste Disposal Act, the Marine Protection Act, the Safe Drinking Water Act, and the Atomic Energy Act.

With respect to regulating the discharge of water pollutants under section 402 of the Clean Water Act and the relationship of that program to hazardous substance spill response under section 311 (on which the response provisions of this bill are based), the Congress addressed the problem in 1978 amendments to the definition of "discharge" in section 311. The first three parts of the section 2(b)(18) definition in this bill carry those amendments forward without change. Thus the explanation at that time and the implementing regulations of the Environmental Protection Agency are continued.

While the exemptions from liability for federally permitted releases are provided to give regulated parties clarity in their legal duties and responsibilities, these exemptions are not to operate to create gaps in actions necessary to protect the public or the environment. Thus the reporting requirement under section 402 should be amended by the Environmental Protection Agency to cause owners and operators who release substances designated under section 311 or this bill under circumstances which are now excluded from section 311, to report under section 402 in a manner similar to that required under section 311 so that the appropriate steps may be taken to protect, for instance, drinking water supplies or other downstream

resources. The current 24 hour notice period under the NPDES regulations should be amended to provide immediate notice in the event of a failure of a treatment or operating component which results in a release of a hazardous substance. Such a case recently occurred in Orangeburg, South Carolina. While exclusion from section 311 was claimed, the company's notice, which was filed in a manner consistent with section 402, was too late to protect downstream drinking water sources. This should be repaired by the Environmental Protection Agency in the regulations implementing the notice provisions of section 402.

Also because of its broadened scope, it should be clear that the liability provisions of S. 1480 would apply to any unauthorized discharges by any person into publicly-owned treatment works. Thus discharges of hazardous substances from mobile facilities which are unauthorized by the publicly-owned treatment system (midnight dumpers), or discharges of such substances from fixed facilities into sewer systems which are not authorized under a pretreatment program are releases for purposes of this Act, never excluded as federally permitted releases, and the full authority and responsibilities established by the bill would apply.

Accidents—whatever their cause—which result in, or can reasonably be expected to result in releases of hazardous pollutants would not be exempt from the requirements and liabilities of this bill. Thus fires, ruptures, wrecks and the like invoke the response and liability provisions of the bill.

The fourth element of the definition covers permits for dredged or fill material under section 404 of the Clean Water Act. Permits issued under this process are subjected to a hazardous substance review, as required by the Environmental Protection Agency, during the permitting process. Where hazardous substances are likely to be present in dredged or fill material, testing may be required. According to EPA regulations, section 404 permits will be granted only where evidence indicates that hazardous substances will not result in substantial harm. Permittees who comply with the requirements for permit issuance and the conditions of their permit would be covered by this portion of the definition.

Subparagraph (E) of the definition addresses permits issued under section 3005 (Permits for Treatment, Storage or Disposal of Hazardous Waste) of the Solid Waste Disposal Act. The reported bill tightly limits the types of disposal site releases that would be covered by this definition. First, only final permits are included. Sites or facilities which have interim status under section 3005 (e) do not adequately utilize acceptable levels of technology, and do not qualify for this exclusion. Second, to be covered by this portion of the definition, the permit applicant must specify the hazardous substance to be released and agree to controls on such releases. For example, this subparagraph would not cover permits where the permitee has built a disposal site to a design standard but for some reason it leaks a hazardous substance. For such a situation to utilize the exemption under this section the permittee would have had to designate these releases and made them subject to a standard of practice, control procedure or bioassay limitation or condition, or other control.

Similarly, a properly closed disposal site that subsequently leaked would not be covered by this definition (although such a site might well be covered by the post-closure liability portion of this bill).

The sixth element of the definition encompasses permits under the ocean dumping section (section 102) and the ocean dredging section (section 103) of the Marine Protection, Research, and Sanctuaries Act. These ocean dumping and ocean dredging permits are subjected to a hazardous substance review during the permitting process. Thus, compliance with requirements for permit issuance and the conditions of a permit issued under these sections of the Marine Protection, Research, and Sanctuaries Act would be covered by this portion of the definition.

The seventh portion of the definition addresses the Underground Injection Control program under Part C of the Safe Drinking Water Act. This provision exempts a release to the substrata of the Earth of a specific containment which is designated as hazardous under this bill, if such release is authorized and in compliance with the conditions of such authorization granted under the Underground Injection Control Program of the Safe Drinking Water Act.

Subparagraph (H) of the definition covers several sections of the Clean Air Act, as amended, where they result in the control of air emissions of hazardous substances. In the Clean Air Act, unlike some other Federal regulatory statutes, the control of hazardous air pollutant emissions can be achieved through a variety of means: express emissions limitations (such as control on the pounds of pollutant that may be discharged from a source during a given time); technology requirements (such as floating roof tanks on hydrocarbons in a certain vapor pressure range); operational requirements (such as start up or shut down procedures to control emissions during such operations); work practices (such as the application of water to suppress certain particulates); or other control practices. Whether control of hazardous substance emissions is achieved directly or indirectly, the means must be specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant. This section of the federally permitted release definition includes any permit or control regulation under one of the cited sections of the Clean Air Act which has this effect.

The ninth element of the definition addresses the Atomic Energy Act of 1954 which establishes a comprehensive Federal regulatory program for specified uses and classes of nuclear materials. Unlike the other environmental statutes referred to in this amendment, the Atomic Energy Act limits any delegated regulatory role for States and their political subdivisions. The most notable exception is section 274 (b), which authorizes the Nuclear Regulatory Commission to adopt agreements with individual States for transfer of regulatory authority over designated source, byproduct. or special nuclear materials.

Under either Federal or State regulatory regimes, releases of source, special nuclear, or byproduct materials that are within the terms of a license or permit issued by the Commission or by an agreement state are covered by this portion of the definition. The definition also applies to releases of designated nuclear materials, defined in sections

11e, 11z, and 11aa of the Atomic Energy Act of 1954, when those releases are made pursuant to Commission order.

The Committee does not intend for the notification elements of the bill to apply to the federally permitted releases defined in section 2 (b) (18). The laws authorizing the permit and regulations that control these releases provide for notification and such notification procedures should provide the same public benefits—especially regarding timely response—as would be provided in S. 1480. Notice is crucial to the removal and remedial operations which are central to the reported bill. The federally permitted release exceptions are not directed at avoiding notice, but rather to make it clear which provisions of law apply to discharging sources.

There are some activities which are subject to Federal or State regulation which do not fall neatly into one of the programs established to protect a particular media such as air or water or land. One of these is the application of pesticides—especially in agricultural practices. The bill provides that damage or removal costs resulting from field applications involving pesticides which are registered under the Federal Insecticide, Fungicide, and Rodenticide Act are not recoverable under the provisions of section 4 of S. 1480. It should also be clear that the notice and penalty provisions do not apply to such routine field applications. Accidents or international disposals which result in the release of a pesticide in other than its intended field application would, of course, be subject to the notice provision of the bill. Only in this manner could the preventive response mechanisms of the bill operate to protect public health.

With respect to spills and future releases, S. 1480 builds upon and carries forward the preventive orientation of section 311 of the Clean Water Act. Thus the spill prevention control program—which has been so successful in the case of oil releases—should be aggressively pursued by the Environmental Protection Agency and the Coast Guard. The Committee is disturbed that the authority of section 311 for the Secretary of Transportation to issue spill prevention programs for rolling stock and vessels has not been implemented. It is essential this authority be implemented immediately, especially with regard to trucks, barges, and railroads.

The Environmental Protection Agency should expedite the issuance of the spill prevention program applicable to designated hazardous substances.

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Response Mechanism

Section 3(c) is the basic provision which authorizes the Federal Government to act to abate problems resulting from a release, discharge or disposal of hazardous substances into the environment.

The bill establishes two levels of government response to any release discharge or disposal of hazardous substances—"removal" and "remedial action". Subsection 2(b)(1) provides that "remove" or "removal" has the same meaning as provided in section 311(a) of the Clean Water Act. Subsection 2(b)(17)(B) clarifies that "remove" or "removal" also includes, but is not limited to, provision of security fencing or other measures to separate people from hazardous substances, provision of alternative drinking water supplies, temporary evacuation and housing of threatened individuals if not otherwise provided, and any emergency assistance under the Disaster Relief Act of 1974.

Section 2(b)(7) defines "remedial action" or "remedy" as actions to prevent or minimize any continued discharge or release of hazardous substances or significant threat of such, so that the substances will not migrate further and cause substantial danger to present or future public health, welfare or the environment. The actions taken must be consistent with eventual permanent remedial action if additional actions will be necessary at a later date to obtain a permanent remedy. Remedy is not available for hazardous substance disposal sites which are in compliance with their section 3005(a–d) permit issued under subtitle C of the Solid Waste Disposal Act since such situations are covered by existing law. However, remedy is authorized for disposal sites which are either not in compliance with section 3005 (a–d) or which have only interim status under section 3005(e). The definition of remedy lists a number of examples of the type of actions included in the term. Three of these actions—permanent relocation; offsite transport of hazardous substances or their storage, treatment, destruction or secure disposition offsite; and provision of permanent alternative drinking water supplies—are included as remedial actions only when certain criteria are met.

Subsection (3)(c)(1) allows the President either to remove or arrange for the removal of hazardous substances released, discharged or disposed of and to provide for remedial actions at any time. The President may also provide for removal and remedial actions when there is a substantial threat of a discharge or release of hazardous substances into the environment. The President may also respond to the release or substantial threat of release of any other materials to the environment which may present an imminent or substantial danger to the public health or welfare, regardless of the source of the release. The President may act if he determines that the owner or operator of a vessel, onshore facility or offshore facility at which the discharge, release or disposal occurs or any other responsible party will not properly provide removal and remedial action.

Removal and remedial actions cannot continue in excess of $1,000,000 or longer than six months from the date of the initial response to that specific release unless either of two conditions exist. Removal may continue if immediately required to prevent, limit or mitigate an emergency; there is an immediate risk; and such assistance on a timely basis will not otherwise be provided. Remedial actions may be undertaken after removal actions have consumed 6 months or $1,000,000 if the President has determined the appropriate remedial actions in consultation with the affected State, and if the State where the release is located has complied with section 6(a)(2)(A).

The limitation on continuing removal actions and beginning remedial actions in no way constrains use of the Fund to identify the existence and extent of a known or suspected release, discharge or disposal or substantial threat of such, the materials involved and their source, or the dangers they may represent. In addition, without regard to any limitations on continuing removal or remedial actions the Fund's resources may be used to determine the appropriate Federal and/or state government response, recover costs of such response and enforce the provisions of the Act.

The President is directed to update the National Contingency Plan originally published for section 311 of the Clean Water Act so that the plan reflects the responsibilities and powers created by S. 1480. In particular the revision will add a new section to the Plan to give some consistency and cohesiveness to response planning and actions under this bill. The Plan would include among other items:

(1) appropriate roles and responsibilities for Federal, State and local authorities and non-governmental entities;

(2) methods for discovering and investigating sites of disposed hazardous substances and in-place concentrations of such substances;

(3) methods and criteria for determining the appropriate extent of response measures;

(4) methods for evaluating remedial actions; and

(5) provision for obtaining prepositioning and maintaining necessary response capabilities.

After the revised plan is published, removal and remedial actions should be in accordance with the Plan to the greatest extent possible.

Subsection 6(a)(2) defines the role and responsibilities of State and local government in all removal and remedial actions paid for by the Fund. In addition, this subsection provides for the establishment of priorities for using the Fund in government response.

Subsection 6(a)(2)(A) restricts use of the Fund for remedial actions unless the State containing the source of the release or discharge first gives adequate assurance that certain conditions, if applicable, will be met. Three of the five conditions require State (or local government) cost sharing. The State must pay at least 10 percent of the costs of remedial actions in all cases. If, however, the facility or site was used for the disposal of hazardous substances and was owned by the State or a local government at that time, then at least 50 percent of the costs of removal must be recovered by the Fund from the State and/or the local government. If these removal or remedial actions will require continuing maintenance, then the State must assume responsi-

bility for performing these maintenance activities. However, the State may obtain compensation from the Fund for 90 percent of these costs during the authorized life of the Fund. The State may also be required to first agree to two other conditions. If offsite storage, destruction, treatment or secure disposition is required as part of the remedial actions, then the State is responsible for assuring the availability of any necessary offsite disposal facilities and for assuring that these facilities comply with the requirements of subtitle C of the Solid Waste Disposal Act. Finally, if State employees or State contractors or subcontractors are to be utilized in government response, then the State is required to assure that the program for health and safety protection of response personnel required under subsection 6(a)(1)(P) will be complied with. Nothing in this section is intended to reduce or apportion the liability of an owner or operator of a site under section 4 of the bill. The State share of costs for any one discharge or release incident is to be reduced by the President for any costs of removal or claims for damages payable under section 4(a)(2)(C), (E), and (F) paid by the State or its political subdivisions for that incident between January 1, 1978 and enactment of this bill.

Subsection 6(a)(2)(B)(i) requires the President to identify and publish criteria for determining priorities among releases, discharges, or disposal incidents, or the threat of such, for the purpose of taking remedial actions and, to the extent practicable, for the purpose of taking removal actions. In addition, the President is required to publish, within 90 days, a priority list of releases, threatened releases, or problem disposal facilities or sites, and thereafter to at least annually update the list of priorities. The criteria and the priorities list are to be based on the President's judgment of the relative risk or danger to public health or welfare or the environment.

In updating the initial priority list, the President is to give consideration to any priorities established by the States under subsection 6(a)(2)(C). State priorities for remedial actions are to be established within one year and revised annually thereafter. These State priorities are to be established in accordance with the criteria published by the President and they are to be consistent with the revised National Contingency Plan.

Clause (ii) of subsection 6(a)(2)(B) requires the President to identify and publish a system describing State response actions in accordance with the national priorities list and authorizes the President to contract with the States to perform these response actions and to pay the reasonable costs of such actions. The terms of such contracts will be delineated in the revised National Contingency Plan.

As used in S. 1480, "remove" or "removal action" is that initial response to any release, discharge or disposal (or threat thereof) of hazardous substances which after discovery must be undertaken quickly to protect or prevent actual or potential injury to public health, welfare or the environment. Thus "remove" or "removal" may refer to actual removal by any means including physical, chemical, biological or any other appropriate method, or such other actions as may be necessary to minimize or mitigate damage to the public health, welfare or the environment. Mitigation efforts include, but are not limited to, activities such as spill containment measures; measures re-

quired to warn the public of, and protect it from acute danger; temporary evacuation and housing; activities necessary to close an existing public water supply system and provide and monitor the quality of temporary water supplies for humans, livestock, and crops forming part of the human food chain; monitoring for spread of the hazardous substances; biological and other monitoring to determine the extent of contamination; physical measures to identify and contain substances contaminated by a release, discharge or disposal; providing security fencing, navigational cautions or other means of separation; providing efforts to raise sunken vessels or to right or seal transport vehicles which contain the hazardous substance; implementation of emergency treatment facilities; and emergency assistance under the Disaster Relief Act of 1974. In addition, if a transport vehicle has created a substantial threat to the public health or welfare or to the environment as the result of a release or discharge, or such a release or discharge is imminent, of large quantities or extremely hazardous quantities of a hazardous substance, the President may, under the definition of "removal," coordinate and direct all public and private efforts toward removal or elimination of the hazard or threat and summarily remove and, if necessary, destroy, such vehicle by whatever means are available without regard to any provision of law governing the employment of personnel. Mitigation may also include efforts necessary to locate the source of the release, discharge or disposal and identify properties of the substances released. The costs of such measures, efforts and activities are recoverable.

"Remove" or "removal" is distinguished from "remedy" or "remedial action." "Removal" refers to actions which must proceed without delay upon discovery of a release, discharge or disposal or threat thereof. In contrast, remedy or remedial action refers to potentially more costly, long-lasting response which may include the construction of major facilities and which must often be preceded by considerable study, investigation, planning and engineering before the appropriate actions can be determined. Such major construction may well mitigate the danger to public health, welfare or the environment. But they are not the type of action which is intended to be performed as removal, which refers to immediate responses and whose application can be decided upon without significant delay.

"Remedy" involves the more permanent, costly measures which may be necessary after the need for emergency action has terminated. In addition, under section 6(a)(2) of S. 1480 certain responsibilities must first be assumed by a State or other non-Federal entity before the fund may be used for remedial actions; removal may be undertaken without any prior State assurances. While removal is limited in time and money by section 3(c)(2) except where the emergency continues, no dollar or time limit is imposed by statute on remedial actions.

Remedial action may be taken in response to a discharge, release, or a significant threat of discharge release, or disposal of a hazardous substance. Expenditures to prevent a threatened release, discharge, or disposal may be necessary if damages are to be avoided while also providing considerable savings when compared to the costs of removal after a release, discharge or disposal has occurred. In some cases, the President may choose to address a threatened re-

lease which does not pose as immediate a threat of exposure to public health, welfare, or the environment as smaller less serious ongoing releases if in his judgment the consequences of the potential exposure may cause a larger expenditure of monies to achieve cleanup or where the threatened consequences of such exposure may have a severe impact on public health or the environment.

Remedial action means stopping or containing the migration of hazardous substances into the environment in such a manner as to assure that the hazardous substances will not cause danger to present or future public health, welfare of the environment. In some circumstances the continued migration of hazardous substances cannot technically be totally stopped and that such an absolute requirement may not be necessary to avoid danger. In some circumstances, such as in kepone in the James River and Chesapeake Bay, efforts to totally stop the spread or migration of hazardous substances may actually increase the risk of damages rather than prevent them. In such circumsances, the President, in his discretion, may take remedial action to minimize, but not stop, the continued migration of hazardous substances.

In order to ensure that the limited moneys made available under this legislation provide protection from the greatest number of the most serious threats to public health, welfare and the environment, the President must carefully fashion the appropriate remedial action in each instance. This may necessitate the selection of remedial actions that do not provide a permanent remedy. To assist the President in determining the appropriate remedial action, specific criteria are included in the definition of remedy for three of the most costly possible actions—permanent relocation; provision of permanent drinking water supplies; and transport, storage, treatment, destruction or secure disposition of hazardous substances offsite.

The term "remedy" includes the cost of permanently relocating residences, businesses, or community facilities when relocation would be more cost-effective than, an environmentally preferable to, other offsite remedial actions. In addition to these considerations, a decision to provide permanent relocation may be based, at least in part, on findings from epidemiological or other health effects studies which, in the opinion of the President, demonstrate that a) there is a substantial probability that exposure to hazardous substances from the site has caused or contributed or is likely to cause or contribute to adverse health effect; b) even after remedial actions are taken, persons remaining in the vicinity of the site would continue to be exposed to hazardous substances; and c) such exposure has a significant likelihood of causing or contributing to adverse health effects or exacerbating existing conditions.

Provision of permanent alternative drinking water supplies for humans may be provided as remedial action only if the President determines that, as compared with other remedial actions, such provision is more cost effective, considering capital, operating, maintenance and replacement costs.

Typically, it is anticipated that remedial actions will be taken onsite. Evidence presented to the Committee on the costs of onsite versus offsite remedies suggests that offsite measures may be as much

as seven times more expensive and that the somewhat greater protection which may be provided by these more expensive measures does not necessarily justify the huge cost differential or the greatly decreased number of incidents to which the Fund could respond. For these reasons, offsite remedial actions are only authorized if the President determines they cause less environmental impact than onsite actions and they are: (a) more cost-effective, (b) are necessary to protect public health, safety or the environment from the otherwise continued onsite presence of hazardous substances, or (c) they will result in a net increase in the capacity (beyond that necessary to handle the hazardous substances in question) to manage hazardous substances in compliance with permits issued under Subtitle C of the Solid Waste Disposal Act.

Remedial actions include those operation and maintenance costs which the President determines necessary with the passage of time to continue stopping migration or releases of hazardous substances into the environment. Examples of such operation and maintenance costs include repair of clay caps and eroded dikes, operation and maintenance of a treatment system, and maintenance of a reverse hydraulic head in contaminated groundwater. Operation and maintenance costs do not include costs which are unnecessary to the continued effectiveness of measures taken to stop migration of releases of hazardous substances into the environment. Operation and maintenance costs are not to continue to be considered a part of remedial actions paid from the Fund where an owner or operator or other person held liable under section 4 of this Act or ordered by a court or by the Administrator of Environmental Protection Agency under subsection 3(b) or under any other State or Federal law is found responsible for such costs.

Section 3(c)(1) encourages persons responsible under section 4 to respond to releases, discharges and disposal of hazardous substances and authorizes government response unless the President determines that the response of such persons will be done properly. The paramount purpose of this section is the protection of the public health, welfare and the environment. It is recognized that government response will often be necessary prior to receipt of evidence which conclusively establishes the substances or materials released or the origin of their release, discharge or disposal. Because delay will often exacerbate an already serious situation, the bill authorizes the President to respond when a substantial threat of release may exist. This standard is intended to be a flexible one and holds that it is preferable to err on the side of protecting public health, welfare and the environment in administering the response authority of the Fund.

The authority under section 3(c)(1) for government response permits removal, remedy and restoration of natural resources to be paid from the Fund in a number of situations where section 4 is in applicable. In these instances, recovery of costs should be sought under any other State or Federal law including common law. Examples of such releases or discharges include field application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act and "federally permitted releases" as defined in section 2(b)(18).

Remedial actions for any release, discharge or disposal of hazardous substances for which a department, agency, or instrumentality of the Federal Government has responsibility should be financed through the responsible institution's budget, rather than through the Fund. Government response to releases, discharges or disposal into the environment would be the same as for any other similar non-Federal vessel or onshore or offshore facility.

Existing law is deficient in many areas in providing appropriate response resources and a means of recovery costs. For instance, contamination of harbors and waterways by releases or discharges of in-place hazardous substances is a serious national problem. Although existing law partially addresses this problem, the funds authorized are clearly inadequate to deal with this problem. Moreover, existing law provides no explicit mechanism for recovering expenditures from responsibile parties. This bill allows the President to consider such releases and discharges of hazardous substances from vessels and onshore and offshore facilities when determining priorities under section 6(a)(2)(B).

A special note should be made about the clean-up of PCBs in New York State's Hudson River. During the full Environment and Public Works Committee mark-up of S. 2725, the Clean Water Act Reauthorization, was adopted an amendment which authorized the use of Clean Water Act Section 201 sewage construction grant funds for the clean-up of PCBs in the Hudson. At that time the Committee agreed that funding from S. 1480 would be a more appropriate source of funding for this cleanup effort. The language of the amendment was therefore altered to indicate that the 201 funding was intended to be applicable only until funding was available from S. 1480 or from an appropriation of section 115 of the Clean Water Act. In short, when funds become available under the provisions of this bill for the PCB clean-up, section 201 funding should not be used.

Section 3(c)(2) establishes a clear, unambiguous point beyond which the State must assume its responsibilities as provided in section 6(a)(2)(A) while enabling the Fund to provide removal actions without delay. Under section 3(c)(2), removal actions may continue after obligation of $1,000,000 or 6 months from the initial obligation of Fund monies for removal actions where an emergency continues and assistance would not otherwise be provided on a timely basis.

The requirement that the State first agree to assume its responsibilities as provided in section 6(a)(2)(A) before remedial actions begin serves two purposes. The States are provided the ability to halt further Federal response actions until disagreements over priority and the extent of remedy are agreed upon. In addition, the public is better assured that adequate arrangements have been made to accomplish the remedy and maintain its effectiveness over time.

Remedial actions must be as nearly in accordance with the revised National Contingency Plan as possible. In order to achieve the maximum protection of public health, welfare and the environment with the limited resources of the Fund, the President may have to balance the need for a capital-intensive remedy at one site or facility against the need to respond to other releases, discharges or disposal. These fiscal considerations may necessitate the selection of remedial actions

that do not achieve permanent remedy. Guidelines (such as, for example, cost-effectiveness and phasing of remedial actions) for such decisions may be set forth in the revised National Contingency Plan and may, in addition, be established by rule.

The State or local government commitments required by subsection 6(a)(2)(A) must be adequate for the President to find that they will be fulfilled; however, it is not necessary that all such commitments be fulfilled before remedial actions are begun. If the remedial actions require off-site transportation, storage, destruction, treatment or secure disposition of hazardous substances, the responsibility of the State to assure the availability of a hazardous waste disposal facility need not be met by such a facility within the borders of the State.

Clause (i) of subsection 6(a)(2)(A) requires the State to assume all responsibility for maintenance (including operation) of any removal or remedial actions which continue to require maintenance, using money from the Fund, and pay 10 percent of the costs of such operation and maintenance (or 50 per cent if the site were publicly-owned at time of disposal). The State may comply with this requirement in any of several ways. It may perform the maintenance itself or contract with others to perform the maintenance (using monies from the Fund to pay the appropriate portion of such costs), establish enforceable means for requiring persons liable under section 4 to perform the maintenance, or develop other means acceptable to the President for performing maintenance. It is not intended that the Fund be available to relieve persons liable under section 4 of their responsibilities to provide for such maintenance. The President may suspend and later resume use of the Fund for other than operation and maintenance of remedial actions if he later determines pursuant to section 3(c) that further removal or remedial actions are warranted.

Clauses (iii) and (iv) of subsection 6(a)(2)(A) provide for non-Federal sources to share in the costs of government response. It is not intended that in-kind contributions be used to fulfill these cost-sharing requirements. However, the President is required to reduce the amount to be cost-shared under clause (iii) to the extent that State or local governments can document that they paid direct out-of-pocket costs for removal and claims for damages under subsections 4(a)(2)(C), (E) and (F) for that facility or site between January 1, 1978 and enactment of this bill. Monies obligated or expended which may be eligible for this credit must be amendable to verification by the Administrator before the credit is granted. Such reductions in the cost-sharing requirement are intended to avoid penalizing those States that already have taken action in response to the problems this bill seeks to address. These provisions are also intended to provide an incentive to other States to begin taking necessary remedial actions even before legislation is finally enacted.

Clause (iv) allows the President to recover more than 50 percent of the costs of removal at a facility or site which was owned by a State or local government at the time of any disposal of hazardous substances. Such recovery is to be from the State or from the local government which owned the facility or site. It is not intended that more than 50 percent of the costs of removal be recovered in those instances in which the State or local government ownership results from a non-

discretionary transfer to title such as a lien for unpaid taxes, a required dedication, or a transfer of title as a result of abandonment.

The provisions of section 6(a)(2)(A) are not intended to apply to federally-owned or operated facilities or sites.

Sections 6(a)(2)(B) and (C) establish the State and Federal roles in government response. Beginning twelve months after enactment of the bill, States would have the primary role in determining priorities for remedial action within their boundaries. The President would have the responsibility of setting priorities nationwide. In exercising his responsibility, the President is to consider any priorities established by the States. Since the Fund cannot pay for remedial actions until the State agrees to assume the responsibilities and costs of section 6(a)(2)(A), the national priority system provides the States with reasonable assurance that their priorities will be considered. At the same time, the national priority system assures that the worst national incidents and threats will receive priority for the limited available monies, expertise, and technical capacities of government response.

Section 6(a)(2)(B)(i) requires the President to publish criteria for determining priorities among releases for the purpose of taking remedial action and, to the extent practicable, for the purpose of taking removal action. It is recognized that removal actions must often be taken under emergency conditions, in which time is of the essence. Thus, the President is not expected to delay removal action to consider such criteria unless he determines that such delay will pose no threat to the public health or welfare or the environment.

These criteria serve only an administrative guidance and priority-setting purpose. Notice and comment procedures are therefore inappropriate. Criteria are to be published following consultation with State and local governments and affected private interests. Such consultation is intended to be informal and conducted in a manner which, in the judgment of the President, will not delay compliance with the schedules required by the bill. Affected private interests should be aware of such criteria and provide any information they deem relevant as expeditiously as possible.

Section 6(a)(2)(B)(i) also requires publication within 90 days of a list of priority remedial actions at known disposal facilities or sites or other releases or discharges, or threats thereof.

The priority list is intended to identify disposal sites and releases which, based on information immediately available, may require remedial action. Because of the need to begin remedial actions at some facilities or sites as quickly as possible after enactment, this initial priority list is not subject to the consultation required before identification and publication of criteria for determining priorities among releases or threatened releases.

The President is required to update the national list of priorities for remedial action at least annually. Subsequent revisions of the Presidents' initial priority list, of course, must consider the States' priorities pursuant to section 6(a)(2)(C).

In compiling and revising their list of priorities, it is expected that the States will consider hazardous substances released, discharged or disposed which are reported pursuant to section 3(a)(3) and those

facilities or sites at which hazardous substances are stored or disposed which are reported pursuant to section 3(a)(4). Since the Administrator and the States will also have access to information on active disposal sites under the notification provisions of section 3010 of the Solid Waste Disposal Act, it is expected that in evaluating priorities the States and the Federal government will consider these reports to the extent practical. Thus the reporting provisions of this Act and existing law will serve as a baseline of information for compilation of priority lists. Any gaps in compiling a more complete inventory may be filled by the results of information collection efforts during removal actions and as provided in section 3(c)(3), as well as by any additional information collected by the States. Use of these information sources will provide a sufficient inventory for establishing priorities. Any collection of additional information should not delay compliance with the schedules in section 6(a)(2)(B) or (C), but should be considered in annual revisions of priority lists.

The criteria for determining priorities, and the State and Federal lists of priorities for remedial actions as well, are to be based upon the relative risk or danger to public health, welfare or the environment. Section 6(a)(2)(B)(i) lists factors to be considered to the extent possible.

The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement action will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

Section 6(a)(2)(B)(ii) requires the President to establish a system which enables States affected by a release or discharge of hazardous substances to provide removal and remedial action and be reimbursed for the reasonable costs of these actions from the Fund. To receive reimbursement from the Fund, such State response actions may be undertaken only at facilities or sites which are in accordance with the national priority list established in clause (i). It is intended that where States have the capability to carry out the response actions authorized by this subsection as determined by the President, and where such States agree to carry out these actions consistent with this Act and the revised National Contingency Plan, the President may contract with the States to take the actions. Under clause (ii) the state may assume by contract as much or as little of the responsibility for response as their willingness dictates and, as in the judgment of the President, their capabilities and the circumstances of the facility or site warrant. Any contract between a State and the President shall specify those actions for which the State may be reimbursed from the Fund, require compliance with the National Contingency Plan and this Act in any such State actions, and any other provisions which the President determines are necessary to accomplish the purposes of this Act.

The intent of section 3(c)(1) is to authorize removal with a minimum of delay in order to assure that injury to the public health, welfare and the environment are prevented or minimized and mitigated. This provision is similar to section 311 of the Clean Water Act. Section 511(c) of the Clean Water Act defines section 311 actions of the Administrator as not constituting a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Removal actions may be emergency actions within the meaning of the National Environmental Policy Act of 1969.

In some instances, remedial actions are but a continuation of actions necessary to resolve the emergency and such actions can only prevent injury only if they proceed without delay. For example, the construction of dikes around a hazardous waste disposal facility in anticipation of rising waters from melting spring snows, the provision of permanent alternative drinking water supplies to replace water supplies contaminated by released hazardous substances, and the transport, storage, treatment, destruction, or secure disposition offsite of hazardous substances which are explosive, radioactive, or otherwise dangerous if left on-site, are remedial actions which can only prevent harm only if executed without delay. In developing this bill, a number of similar such situations have been reviewed by the Committee. In such circumstances, remedial actions should not be delayed by the imposition of formal EIS requirements.

In other circumstances, removal actions can effectively postpone any emergency and provide for a longer lead time and a planning process before remedial actions must be undertaken. In such circumstances, it is anticipated that a written assessment of proposed alternatives would be prepared along with measures for mitigating adverse environmental effects of the proposed remedial actions and opportunity for public comment and consultation in the decision-making process would be provided. This requirement is not intended to unduly delay action necessary to protect public health, welfare or the environment, nor are formal hearings necessarily required. In some such circumstances, formal Environmental Impact Statement requirements may be determined to be applicable.

In addition to authorizing such studies and investigations as are necessary to determine and direct removal and remedial actions, cost recovery and enforcement of the provisions of the bill, section 3(c)(3) serves several other information gathering functions which are necessary to accomplish the purposes of the bill. The government response, and in most instances, the liability and victim compensation provisions of the bill results from:

(a) release, discharge or disposal or the threat thereof,

(b) of a hazardous substance as defined in section 2(13), or of substances creating an imminent or substantial threat as provided in section 3(c)(1)(B),

(c) from a vessel or an onshore or offshore facility, and

(d) which is or may result in a danger to public health, welfare or the environment.

Section 3(c)(3) is intended to authorize the President to utilize the Fund to identify the existence and extent of these four factors in

order to determine the need for government response, whether provisions of the Act are applicable, and to alert the public and the government to a potential threat to public health, welfare or the environment so that persons unknowingly exposed may seek appropriate relief. In addition, under section 3(d) the Administrator of EPA or a State acting on behalf of the Administrator, may require any person contributing to activities which may present a danger to public health, welfare or the environment to ascertain the nature and extent of such danger through administrative order or suit in the appropriate U.S. district court.

To implement the site and facility investigation and response authorities contemplated by this bill, the Administrator will frequently utilize contractors as his authorized representatives. The access, entry, and other information-gathering powers granted to the Administrator and his representatives under section 3007(a)(4) of the Solid Waste Disposal Act, section 114 of the Clean Air Act, section 308 of the Clean Water Act, and section 11 of the Toxic Substances Control Act apply to authorized Federal contractors as the Administrator's representatives.

Removal and remedial actions to protect public health, welfare and the environment should begin without delay and prior to full implementation of the programs, regulations, plans and procedures required by this Act. The many pressing problems which have led to enactment of legislation should not continue unabated pending such administrative actions. Therefore, actions necessary to protect public health, welfare or the environment should begin as soon as feasible. The non-regulatory authorities for response provided in this Act and other laws should be exercised prior to completion of any necessary planning, administrative and rulemaking responsibilities. However, once completed, such statutorily required planning, administration and final rulemaking shall govern subsequent government response actions.

Section 3(e) provides broad authority to assure that government response is not delayed due to existing contracting methods. This section allows the use of alternative contracting procedures in those circumstances in which the existing Federal procurement procedures may cause delay in government response to an environmental emergency.

Existing Federal procurement procedures should be utilized to the greatest extent practicable in order to preserve the competitive bidding process. Unacceptable delays in this process, however, should not be allowed to postpone or in any way hamper response action to emergencies. To avoid such problems, this section is intended to allow the President to establish procedures that will assure rapid response to effect cies. To avoid such problems, this section is intended to allow procedures that will assure rapid response to effect the purposes of this Act.

Section 3(b) authorizes the Administrator to establish and enforce requirements for particular facilities or sites for removal, remedy and other control measures which the Administrator deems appropriate to protect the public health and welfare or the environment. Such requirements are to be enforced under existing provisions of the Solid Waste Disposal Act or the Clean Water Act, and may be issued in the

form of regulations or as an administrative order directed to the owner or operator of any site or facility or to any other person held liable under this bill with respect to such site or facility. Such requirements may apply to any site and facility at which hazardous substances have been stored, treated or disposed of, except a facility in compliance with a permit or accorded interim status under subtitle C of the Solid Waste Disposal Act.

This provision is intended to decrease reliance on the Fund and on Federal response where responsible parties can take necessary control, removal, or remedial actions. This will permit expanded and more efficient use of money in the Fund. For instance, situations will arise where the President has responded to a release, discharge or disposal, and conducted certain removal or remedial activities. The incident or contamination may have been mitigated considerably but may still require additional work to adequately protect public health or the environment. This provision permits the President to require private parties to assume the necessary removal or remedial action. Similarly, the President may learn of the disposal, discharge, or release of hazardous substances or the threat thereof, which require removal or remedial actions, but for which, due to the higher national priority accorded other incidents or other factors, the President determines the Fund should not be utilized for government response. In such circumstances the President may require responsible parties to take any action which, in the judgment of the President, is necessary to protect public health, welfare, or the environment.

Judicial review of any regulation pursuant to section 3(b) would be as provided in section 9(a). An Administrative order pursuant to section 3(b) may be enforced by commencing an action in the appropriate Federal district or State court.

It is important to have those present on the scene or nearby a release, discharge or disposal, who often have the greatest technical capacity to deal with the problems caused by hazardous substances, participate in cleanup efforts. Subsection 4(h) provides that where qualified individuals or organizations are participating in cleaning up hazardous substances in a manner recognized by the National Contingency Plan as appropriate, or taking action at the direction of the on-scene coordinator, such individuals or organizations will not be liable for damages as a result of such actions, except for gross negligence or intentional misconduct. The Chemical Manufacturers Association has organized CHEMTREC, a system for providing clean up advice to transporters of hazardous substances and others who may be on the scene of a release, discharge or disposal incident and in a position to respond. In addition, many chemical companies and other industries have teams of trained and equipped personnel that could respond to nearby releases by other parties. The President is expected to make suitable arrangements with the operators of CHEMTREC and other private emergency response systems for their inclusion in the revision of the National Contingency plan contemplated by subsection 3(c)(5), but only to the extent that such inclusion furthers the objectives of that plan and this Act. This should also apply to qualified response teams of individual companies.

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Use of Fund

Section 6(a)(1) describes those purposes for which the Hazardous Substances Response Fund may be used. Monies from the Fund may be used to pay (i) claimants for third party damages and costs of removal due to the discharge or release of hazardous substances from a vessel or a facility; (ii) for actions taken by the President under the authority of section 3(c); and (iii) the President or his designees for other costs of implementing this Act as provided for in section 6. Of course, use of the Fund for government costs in items (ii) and (iii) are subject to appropriation Acts and are not subject to the procedures for claimants seeking third party damages and costs of removal, since this would preclude the government from providing timely response as intended by this Act. These government costs are identified in section 5(h)(1).

The third party damages which may be compensated from the Fund are fewer and of narrower scope than the damages for which a person may be liable under section 4. Section (6)(a)(1) makes the Fund available to victims for rapid relief for acute personal damages to health and income and capital losses to food producers and processors. In addition, this subsection makes the Fund available to assist victims in bearing certain burdens of proof in tort actions to recover the more extensive and long term damages for which a cause of action in Federal courts is established under strict, joint and several liability in section 4. Thus the Fund assists in relieving the acute suffering of victims, but it would not make them economically whole. Recovery by victims of the more extensive, long-term damages is intended to be made possible under section 4 through the courts.

Any person may present a claim to the Fund under this Act for compensation for damages or removal costs resulting from a discharge, release or disposal of a hazardous substance where the source of the discharge or release, or a person liable for such costs of removal or damages is not known, cannot be identified, or where the claim has been submitted to the source or any other person liable under section 4 and has not been satisfied.

Section 6(b)(3)(I) requires claims for damages to be presented to the Fund within three years from the date of the discovery of the loss or the date of enactment of the Act, whichever is later. Further limitations on claims which may be presented to the Fund and receive compensation for releases or discharges prior to enactment of the Act are set forth in section 4(n) and are described in this report in the section entitled "Liability". In addition, payment of some third party damages from the Fund are limited by the period of time for which damages may be computed and the earliest date from which such damages may be computed; these provisions, which are specific to certain third party damages, are described in this section of the report.

Claimants are eligible to seek compensation from the Fund for damages or for the costs of removal due to a "release," "discharge" or "disposal" of a "hazardous substance" from a "vessel" or "facility" as defined in section 2. Section 6 restricts such compensation in two instances. Section 6(d) prohibits use of the Fund to pay for any claim to the extent that the discharge or release involved, or the dam-

ages incurred as a result thereof, was caused by the gross negligence or willfull misconduct of the claimant. Section 6(a)(4) prohibits payment of claims for damages, but not for removal costs or injury, destruction or loss of natural resources, resulting from the normal field application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. The only exception to the prohibition of section 6(a)(4) is for loss of income or capital sustained by food producers or processors under section 6(a)(1)(N) and (O). In addition, section 8(b) precludes payments to claimants for removal costs or damages if they have received compensation for the same removal costs or damages under any other Federal or State law.

Section 6(a)(1) authorizes use of the fund for the following purposes:

(1) The costs of removal as well as damages resulting from (i) any injury, destruction or loss of natural resources, including reasonable damage assessment costs; (ii) loss of income or profits or impairment of earning capacity due to personal injury or injury or destruction of real or personal property or natural resources; and (iii) all out-of-pocket medical expenses, including rehabilitation costs or burial expenses due to personal injury, where a person liable is not known, cannot be identified, or where a person liable has been presented a claim and has not satisfied it.

(2) All costs of removal and other costs of carrying out the National Contingency Plan, as amended, including removal costs incurred and approved under the plan.

(3) The costs of establishing and maintaining Federal strike forces, emergency task forces or other response teams under the National Contingency Plan, including the costs of equipment, similar overhead, and damage assessment capabilities.

(4) The costs of assessing injury, destruction or loss of natural resources.

(5) The costs of Federal or State restoration, rehabilitation or replacement of injured, destroyed or lost natural resources.

(6) Reimbursement of States who use monies they collected or appropriated to pay claims for costs of removal or damages under section 4(a)(2)(C), (E) and (F), providing such payments are pursuant to the National Contingency Plan and a contract under section 6(b).

(7) The costs of a program to identify, investigate and take abatement action under this Act.

(8) The costs of research related to the natural resource protection purposes of this Act and section 311 of the Clean Water Act, up to a maximum of $10,000,000 per fiscal year.

(9) The costs of research to develop methods and technology for removal and remedial actions, including portable onsite technology.

(10) The administrative and personnel costs of administering the fund and this Act.

(11) The costs of epidemiologic studies, a victim registry for long term health effect studies, and diagnostic services not otherwise available to determine the presence of long-latent diseases in exposed populations.

(12) The reasonable costs of expert witnesses to assist victims and the fund in recovering damages.

(13) Payment for loss of income or capital loss due to destruction, loss, condemnation, or restriction on use of fish, seafood or agricultural products and resources when sustained by agricultural producers or processors or commercial fishermen or fish or seafood processors.

(14) The costs of a program to protect the health and safety of response personnel.

Paragraphs (A) and (B) of section 6(a)(1) provide for the costs of removal and for damages resulting from (i) any injury, destruction or loss of natural resources, including reasonable damage assessment costs; (ii) loss of income or profits or impairment of earning capacity due to personal injury or injury or destruction of real or personal property or natural resources, regardless of ownership of the property or resources; and (iii) all out-of-pocket medical expenses, including rehabilitation costs or burial expenses due to personal injury, where a person liable is not known, cannot be identified, or where a person liable has been presented a claim and has not satisfied it.

Loss of income or profits or impairment of earning capacity refers to direct, calcuable losses. Personal income derived from business in lieu of wages for a claimant who is an owner (as sole proprietor, partner or otherwise) of a firm refers to the amount of average wages regularly received during the twelve months preceding the loss: If the claimant does not regularly receive wages for his or her services, then the claimant's average share of the net profits (after all income taxes and business expenses exclusive of dividends) for the twelve month period provides the basis for determining the loss.

Section 6(a)(3)(B) limits payment of claims for lost wages or other personal income to 100 percent of the actual net amount lost in the first year after commencement of the loss and 80 percent of the actual amount lost in the second year. These limits do not apply to losses provided in section 6(a)(1)(N) or (O). Where the claim is filed after commencement of the loss but before the full first 2 years of the loss and the President determines that the loss will continue for all or a portion of the two years, payment shall be based on the wages or other personal income received in the 12 month period prior to commencement of the loss.

With respect to claims for out-of-pocket medical costs, except for diagnostic services, section 6(b)(3)(G) requires that the claimant incurred or will incur medical expenses of at least $300 before payment may be made. However, if this threshold is met, the claimant is entitled to reimbursement for the total amount certified, including the first $300. The term "out-of-pocket medical expenses" includes the direct costs of diagnostic, medical, surgical, hospital nursing care, ambulance, and other related services, and drugs, medicines, necessary restorative and rehabilitative programs, and burial expenses.

Section 6(a)(3)(A) provides that the Fund can compensate victims for out-of-pocket medical expenses incurred during the period from initial exposure to a hazardous substance through the sixth year following discovery of such exposure. For the purposes of paragraph (A), and with respect to the statute of limitations under section 6(b)(3)(I), a claimant shall be deemed to have discovered or have knowl-

edge of his injury or disease when (i) through medical diagnosis or a comparable statement of a public health official, such claimant is informed of the nature and seriousness of such injury or disease, and (ii) through community recognition, statement of a public health or environmental protection official or similar means, such claimant becomes aware of a likely or alleged relationship between such injury or disease and the release of a hazardous substance.

Section 6(a)(3)(A) should be read in conjunction with section 4(n) for out-of-pocket medical expenses occurring before the date of enactment of the bill. It should be noted that section 6(b)(3)(I) deals with how long after discovery or after enactment a claim can be presented to the Fund while section 4(n) deals with which claimant's medical expenses may be compensable if they occurred before enactment and section 6(a)(3)(A) concerns the time period to be used in computing payment of any medical expenses.

The Committee rejected a time period of six years from initial exposure in section 6(a)(3)(A) because a victim's initial exposure may well have occurred years or even decades before the exposure grew serious enough to be dangerous. Thus, starting the compensation period at the time of initial exposure could exclude many victims from any coverage at all. This should be distinguished from the problem posed by diseases with long term latencies that take many years to manifest themselves. Rather, the Committee was concerned in this section with exposure that is minor at first, but gradually builds to a level at which it inflicts direct harm to health. An example would be a site that develops a small leak that worsens over a period of years to the point where its releases threaten local residents. Instead, section 6(a)(3)(A) uses date of discovery of initial exposure to start the six year compensation period because it is presumably closer to the time when exposure reaches a serious level. Because the occurrence of serious health problems will tend to lead rapidly to discovery of exposure, it is less likely that heavy medical expenses will be incurred during the period between initial exposure and discovery of exposure. Any such expenses should be covered by the Fund, but it is equally if not more important to cover the expenses that occur after exposure is discovered. However, it was also decided that payment from the Fund should not be available for lifetime treatment, rather the Fund covers only the first six years' medical expenses after discovery of exposure. This coverage of medical expenses provides relief during the period when litigation for damages for longer time periods may be underway.

Subparagraph C of section 6(a)(1) makes the Fund available for costs of removal and other costs of implementing the National Contingency Plan as developed under this Act and section 311(c) of the Clean Water Act. Under this section, United States government agencies and States may use the Fund for costs of removal if such costs have been incurred as a result of and approved under the National Contingency Plan. States may be reimbursed for the reasonable costs incurred for removal and remedial actions at facilities or sites accorded national priority when such actions are pursuant to a contract as provided in clause (ii) of section 6(a)(2)(B). Provision for such reimbursement of States is discussed in the "Government Response" sec-

tion of this report. Payments from the Fund under section 6(a)(1)(C) are to be made pursuant to section 3(c), in the same manner as has been used in implementing section 311 of the Clean Water Act.

Subparagraph (G) of subsection 6(a)(1) authorizes reimbursement of a State for payment of claims for costs of removal or damages under section 4(a)(2)(C), (E) or (F) which the State has paid from monies under its control and which it collected or appropriated. Such reimbursement is limited to paid claims if such claims are provided for in the National Contingency Plan and in a contract under subsection 6(b)(1) between the President and the State. Any such contract shall as a condition of reimbursement require State compliance with the National Contingency Plan and any claims procedures established pursuant to section 6(b)(3), at a minimum. Any such contract shall include a provision precluding the State from realizing a double recovery of any amount paid in a claim.

Subparagraph J of section 6(a)(1) provides for research to develop, and integrate as part of government response, mobile or portable onsite technology capable of treating, neutralizing, destroying or otherwise rendering hazardous substances harmless. Other research objectives are to develop methods and technology capable of stopping the spread of hazardous substances into and through groundwater, the air or onto the land and through the food chain. The development and demonstration of such new technologies and methods are essential to reduce the unit costs of and improve the effectiveness of government response actions and thereby make it possible to use the limited monies in the fund to remedy more incidents. Without such an effort, the need for even larger sums of money can be anticipated. The results of these research efforts should be considered in preparing the report to Congress required by section 5(j).

Subparagraph (L) of section 6(a)(1) authorizes the President to use the monies in the fund for epidemiological studies, and development and maintenance of a registry of persons exposed to hazardous substances when the President determines such a registry is necessary to determination of probable long-term health effects in a population which may be at high-risk. In addition, this subparagraph enables the President to use the Fund to provide diagnostic services to special populations who have been exposed to hazardous substances and may be suffering from long-latent illness or disease as a result of such exposure, but are unable to make such a determination because of the costs or limited availability of such diagnostic services.

The personnel, contractor support, laboratory capacity, and the expertise necessary for many of the services authorized by this paragraph are in limited supply. The pressures for such services will exceed the supply for some time to come. Therefore, the President is to be accorded broad discretion in allocating these limited resources so that the greatest protection of public health and welfare can be realized. However, it was also recognized that the ability of this Act to deter risk is substantially assisted by a population informed that it is being harmed and aware of its rights to recover damages. Therefore, it is not intended that use of the authorities provided by this subparagraph be limited to serving only government response actions.

Neither is it intended that such studies, services or registries become prerequisites before government response actions may be undertaken.

Subparagraph (M) of section 6(a)(1) authorizes claims for the costs of expert witnesses employed by claimants in actions to recover damages under section 4, to the extent authorized by the court. In addition, subparagraph (M) enables payment for the costs of neutral expert panels if established by the court, on its own motion, or on the motion of any party. It is the intent of this section to provide claimants and the court access to witnesses and experts to which they otherwise may not have access in litigation. The costs of such experts, the complexity and difficulty of the causation burden which victim's must bear in litigation involving damages resulting from exposure to hazardous substances, the protracted proceedings and attendant costs, and the generally superior resources and expertise frequently available to large companies who may be defendants, make desirable provision of reasonable economic assistance to plaintiffs who may otherwise be denied an opportunity to present their case. In implementing this subparagraph, the President may receive and decide upon claims or contract with others to administer a fixed amount of money so as to best achieve the purposes of this subparagraph.

Fund and Fee Structure

Section 5 establishes a $4.085 billion Hazardous Substance Response Fund in the U.S. Treasury and the means by which the fund will be financed. The fund is administered by the President and the Secretary of the Treasury.

The fund is financed by industry fees, appropriations, recovered moneys, transfer of Clean Water Act section 311 and 504 funds, and interest from investing any monies not required to meet potential immediate obligations of the fund. The fees may not exceed $250 million in fiscal year 1981, $525 million in fiscal year 1982, and $700 million in fiscal years 1983 through 1986. Appropriations in each of the corresponding years are limited to $35 million, $75 million and $100 million.

The fees are derived from levies on 11 primary petrochemicals, 34 inorganic raw materials and petroleum oil as defined in section 2. The fees are levied on each pound of the primary petrochemicals and each short ton of inorganic raw materials which a supplier (producer, manufacturer, importer, or exporter of primary petrochemicals or inorganic raw materials) provides to other or uses himself to make more complex intermediate products, final products, or wastes. The fees on petroleum oil are levied on a per-barrel basis on refinery owners and owners of petroleum oil for export or import. The fees may be levied only once on the same quantity of petroleum oil, primary petrochemical or inorganic raw material, except that refined petroleum used as a feedstock to a primary petrochemical is also subject to the fee as a primary petrochemical.

The terms "primary petrochemical" and "inorganic raw material" are each defined to mean only the specially listed substances in subsection 5(1).

A "refinery" is defined as a permanent facility in the U.S. which refines petroleum oil. The term "petroleum oil" as used in subsection 5 means petroleum, including crude petroleum and any of its fractions or residues other than carbon black.

The term "supplier" means a producer, manufacturer, or generator (including an exporter), or an importer of primary petrochemicals or inorganic raw materials. A supplier either provides primary petrochemicals or inorganic raw materials to others through sale or other transfer for use by others, or himself uses those produced, manufactured, generated, imported, or exported substances subject to the fee.

The initial fees for each of 46 substances are specified in subsection (d)(4). The fees in subsection (d)(4) apply in the first year and continue until modified. After the initial levying of fees, the Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, may annually establish a schedule of fee rates by rule. The schedule of fee rates may not result in fees which exceed 2 percent of the list price of the primary petrochemical, inorganic raw material or petroleum oil. The fee rates may not exceed $20 per short ton for a primary petrochemical, $10 per short ton of inorganic raw material or 3 cents per barrel of petroleum oil. In addition, the total fee revenues per fiscal year may not exceed the following limits:

[In millions of dollars; fiscal years]

	1981	1982	1983 and each year through 1986
All primary petrochemicals	162	338	450
All inorganic raw materials	50	112	150
All petroleum oil	38	75	100

Within the above limits of fee rates per unit of production, percent of list price, and total revenues per year, subsection (e) describes how the equity of the fees may be improved so that they reflect, to the extent practical, the past and anticipated expenditures of the Fund. The equity adjusments may be made biannually, with the first such adjustment affecting the fourth year's fees. The adjustments are to reflect the incidence (frequency) with which the primary petrochemicals, inorganic raw materials and petroleum oil (or their intermediates, final products and wastes) are encountered in releases requiring payments from the Fund. Three kinds of adjustment in fees are provided for: (i) the distribution of the relative total fees paid by each of the three classes (petrochemicals, inorganics and petroleum oil); (ii) the fee rate for each of the 46 substances subject to a fee; and (iii) the industrial categories which are paying the fee.

Based upon the criteria of subsection (e), fees during the first three years on ammonia, phosphoric acid, nitric acid and sulfuric acid are set at zero when these substances are supplied to the fertilizer production industry. Similarly, fees during the first three years are imposed upon copper sulfate, cupric oxide and cuprous oxide rather than all copper. Thereafter, adjustments in fee rates for the fertilizer production industry and for copper or its intermediate compounds, would be determined by the Fund's payout experience as provided in subsection (e).

To assure equity and encourage recycling and reuse, primary petrochemicals or inorganic raw materials are not subject to a fee to the extent they are used as a source of fuel, produced solely as a byproduct of pollution control and used commercially, reintroduced into the production of other substances subject to the fee (e.g. benzene used to lighten heavy crude oil), derived from recycled material, or removed from wastes and recycled into a production process.

The industry fees are assessed and collected by the Secretary of the Treasury, acting under his existing authorities. The President annually determines the level of income sufficient to immediately meet potential obligations of the Fund, but in no event may such amounts cause the limits established in subsections (b) and (d) to be exceeded. Any excess in the Fund may be invested and the earned interest credited to the Fund. In addition any excess may be used to purchase reinsurance if such reinsurance increases the ability of the Fund to meet its potential obligations. To the extent necessary to meet potential obligations as determined by the President, the balance in the Fund (including monies collected, transfered, recovered and loaned) may exceed the sum of the amounts derived from industry fees and from appropriations. Monies credited to the Fund in any fiscal year remain available until expended.

In any fiscal year, two-thirds of the moneys from industry fees and from appropriations credited to the fund in that year may be used for government costs of locating releases of hazardous substances, assessing their potential harm, costs of removal, assessment of natural resources damage, restoration of natural resources, and associated administrative and personnel expenses, including expenses of recovery of such costs. The remainder of fees and appropriations is available for third-party damages and other expenses authorized in section 6.

If in any fiscal year the balance in the fund is insufficient to meet obligations, the Treasury may lend money to the fund in amounts not to exceed the total of fees and appropriations authorized in subsection (b) for the next fiscal year. Such loans are to be used for third-party damage claims and for (1) removal costs as necessary during the first two years, and (2) costs of removal for unanticipated catastrophic releases. Treasury loans are to be repaid from future fee revenues.

Within four years after the fee is initiated, the Administrator is to submit a report to Congress on the adequacy of the size of the fund and its authorized life and on the need for any statutory changes in the fee system.

The Hazardous Substance Response Fund created in section 5 is to pay for Government response to releases or potential releases of hazardous substances and third party claims attributable to such releases. The evidence before the Committee clearly illustrates that the demand for moneys for Government response far exceed the amounts authorized in this bill. The moneys needed for third party damages are extremely difficult to project from the available information, and therefore the amounts provided have been similarly defined. Thus the $4.085 billion six year fund derived from fees and appropriations is less reflective of demand than it is of a balance

managed and used in the time period allotted and that amount which economic analyses show to not stress the well-being of affected industries. Fees and appropriations equal to the full authorization limits will be necessary to produce adequate money to accomplish the purposes of the legislation.

The fund will be built up over three years with fees and appropriations providing up to $285 million the first year, $600 million the second year, and $800 million the third year and each year thereafter through the sixth year. Authority to collect further fees and appropriations expires after the sixth year. Authority to pay claims does not lapse until there is no longer a balance in the fund. Since a report on the fund and fee system is required within four years, the Congress will have an opportunity based upon experience to determine the need for adjustments in the fund and fee provisions.

Financing the Fund primarily from fees paid by industry is the most equitable and rational method of broadly spreading the costs of past, present and future releases of hazardous substances among all those industrial sectors and consumers who benefit from such substances. The concept of a fund financed largely by appropriations was not adopted. A largely appropriated fund establishes a precedent adverse to the public interest—it tells polluters that the longer it takes for problems to appear, the less responsible they are for paying the consequences of their actions, regardless of the severity of the impacts. Too often the general taxpayer is asked to pick up the bill for problems he did not create; when costs can be more appropriately allocated to specific economic sectors and consumers, such costs should not be added to the public debt.

The fee system was adopted after extensive investigation of alternatives. This fee system provides the best balance of equity, rapid implementation, legal defensibility, administrative simplicity, and a minimum of any adverse economic and environmental impacts. The fees are imposed at the beginning of the commercial chain of production, distribution, consumption, and disposal of hazardous substances. The fee is assessed on substances which are either hazardous themselves or are the basic building blocks (primary petrochemicals, inorganic raw materials and petroleum oil) used to make almost all major hazardous substances.

By collecting a fee at the beginning of the production cycle, this fee system uses the efficiency of the marketplace to automatically and broadly distribute the risks associated with chemicals through fees on all industrial sectors in the chain of production, transportation, use and disposal of hazardous substances. This is a more effective mechanism than distributing risks through the rules and regulations of a Federal agency and it is fully consistent with the spirit of regulatory reform.

The 46 substances subject to the fee meet at least two or more of the following criteria: (i) they are inherently hazardous or hazardous in a number of forms (intermediates or final products), (ii) they are hazardous in some form if released, (iii) hazardous wastes are generated in producing them or their intermediate or final products, (iv) they are capable in one or more forms of increasing the hazardous po-

tential of other substances; and (v) they are produced in significant quantities. A fee may attach to a product even though it is itself environmentally benign, since earlier in the chain of production, distribution, consumption and disposal it used a hazardous substance or later in the chain it will be used to generate a hazardous substance.

Because of the urgent need to expand government response to the hazards which have necessitated this bill, the fees begin to be collected 180 days after enactment. To avoid the necessity of establishing fee rates by rule, the bill provides the initial fee rates for each substance needed to raise $250 million annually in subsection (d)(4). It is intended that the fee rates necessary to raise $525 million be computed in the same manner. Therefore, the fees in the second and third years should be as shown in Table I unless the President determines that: (i) fees totalling $525 million the second year or $700 million the third year are not needed; (ii) production amounts of the 46 substances are significantly different than used for Table I; or (iii) the statutory limits specified in subsections (c) and (d) would be exceeded.

Beginning with the fees in the fourth year, subjection (e) provides authority for biannual refinement in equity by adjusting the amount of fees so that they reflect, to the extent practical, the past and anticipated expenditures of the Fund. Fee adjustments may be made by the Secretary of the Treasury by rule, after consultation with the Administrator of EPA.

Subsection (e) is not intended to burden adjustment of the fee with costly accounting or result in any delay in government response, claims processing or fee adjustments. Nothing in subsection (e) is intended to require additional sampling or laboratory analysis to ascertain the specific identity or amount of released hazardous substances or to allocate the costs attributable to each substance or industrial category beyond that which would otherwise be necessary for government response, claims processing, cost recovery or enforcement purposes.

Paragraph (e)(1)(A) provides that the percentage of annual fees collected from petroleum oil, all primary petrochemicals as a class and all inorganic raw materials as a class be approximately proportional to the frequency with which substances in each of these three classes (or that of their intermediates, final products and wastes produced from substances subject to the fee) are detected in releases requiring payments from the fund. In the first three years, the percentage contributions are assumed to be 15 percent from crude oil, 65 percent from primary petrochemicals and 20 percent from inorganic raw materials. This initial distribution of fees among the three classes reflects the generation of hazardous wastes which are expected to be the largest category of expenditures in at least the first three years. Wastes representing 92 percent of annual hazardous waste generation were, after correction for weight bias, characterized as approximately 3 to 1 organic (petrochemicals) to inorganic. The 15 percent from petroleum oil reflects waste generated by the petroleum refinery industry and the high incidence of waste oils found at hazardous waste disposal sites.

TABLE I.—FEES 1ST 3 YR

[Dollars per short ton, fiscal years]

	1981	1982	1983
Primary petrochemicals: [1]			
Acetylene	$3.88	$8.66	$11.95
Benzene	3.88	8.66	11.95
Butane	3.88	8.66	10.24
Butylene [2]	3.88	7.80	7.80
Butadiene	3.88	8.66	11.95
Ethylene	3.88	8.66	11.95
Methane [3]	3.44	3.44	3.44
Napthalene	3.88	8.66	9.04
Propylene	3.88	8.66	10.92
Toulene [4]	3.88	8.66	11.95
Xylene [5]	3.88	8.66	11.95
Inorganic raw materials: [1]			
Antimony	2.66	10.00	10.00
Antimony trioxide	2.24	10.00	10.00
Antimony sulfide	1.94	10.00	10.00
Arsenic	2.66	10.00	10.00
Arsenic trioxide	2.04	9.70	9.70
Barium sulfide	2.18	2.30	2.30
Bromine	2.66	10.00	10.00
Cadmium	2.66	10.00	10.00
Chlorine	2.66	2.70	2.70
Chromium	2.66	10.00	10.00
Chromite	1.12	1.12	1.12
Potassium dichromate	1.02	10.00	10.00
Sodium dichromate	1.12	10.00	10.00
Cobalt	2.66	10.00	10.00
Copper sulfate	1.13	10.00	10.00
Cuprous oxide	2.37	10.00	10.00
Cupric oxide	2.14	10.00	10.00
Hydrochloric acid	.18	1.05	2.50
Hydrogen fluoride	2.53	10.00	10.00
Lead	2.66	10.00	10.00
Lead oxide	2.48	10.00	10.00
Mercury	2.66	10.00	10.00
Nickel	2.66	10.00	10.00
Nitric acid [6]	.15	.72	3.24
Phosphorus	2.66	10.00	10.00
Phosphoric acid [6]	.19	1.14	8.00
Potassium hydroxide	.11	.27	.58
Sodium hydroxide	.11	.27	.58
Sulfuric acid [6]	.16	.85	1.00
Stannous chloride	1.71	10.00	10.00
Stannic chloride	1.27	10.00	10.00
Zinc	2.66	10.00	10.00
Zinc oxide	2.15	10.00	10.00
Ammonia [7]	.11	.27	.58
Petroleum oil [1] (cents)	.756	1.59	1.99

[1] Fee on primary petrochemicals and inorganic raw materials expressed in terms of dollars per short ton. Fee on petroleum oil expressed in terms of cents per barrel.
[2] Excluding that portion ued to make butadiene.
[3] Excluding that portion used to make ammonia and acctylene.
[4] Excluding that portion used to make benzene.
[5] Excluding meth-xylene.
[6] Excluding that portion used to make fertiliers.
[7] Excluding that portion used to make fertilizers and all nitric acid.

Paragraph (e)(1)(A) does not require determination of the amount or the specific identity of the released substances; it requires determining only whether the release involves oil, another organic substance and/or an inorganic substance. Where the release involves substances in more than one of these three classes, each would be credited on equal share of the total value of payments for that release, unless information otherwise available permitted a more accurate allocation of costs among the three classes. In determining any reapportionment of fee burdens among the three classes, the Secretary of the Treasury may also consider projected expenditures.

Paragraph (e)(1)(B) provides for modification of fee rates—the fee per unit of petroleum oil, each primary petrochemical, and each

inorganic raw material. Paragraph (e)(1)(B) authorizes modification of the fee rates so that rates are approximately proportional to the frequency (not the total amount of the substance) with which the substance subject to the fee (or that of its intermediates, final products and wastes) is detected in releases requiring Fund expenditures. In determining any modification of fee rates the Secretary of the Treasury may also consider available information on projected expenditures from the Fund. Where a release involves more than one substance subject to the fee, each would be credited an equal share of the payments for that release, unless available information made it practicable to allocate the costs among substances to the fee.

Paragraph (e)(2)(A) provides that if in the first three years of expenditures, the Fund does not incur costs for a substance (or its intermediates, final products or wastes) then the fee rate for that substance will be established at the lowest rate applicable to any substance in the next fee year and continue until modified by paragraphs (e)(2)(B) and/or (C).

Paragraph (e)(2)(B) authorizes the fee to be established at zero if by the second biannual fee adjustment a substance (its intermediates, final products and wastes) has not been identified in any releases requiring Fund expenditures. If the Secretary of the Treasury subsequently determines that new expenditures from the Fund for that substance are sufficient to necessitate a contribution to the Fund, then a fee may be reimposed by rule and become effective the next annual fee collection period.

Paragraph (e)(2)(C) authorizes the Secretary of the Treasury, in consultation with the Administrator of EPA, to distinguish between industrial categories when applying paragraph (2)(B). That is, the fee on a substance may be set at zero for one or a few industrial categories if the Administrator advises the Secretary that routinely collected information supports the conclusion that the releases are solely attributable to other industrial categories. The authority to vary the fee for the same substance by industrial category is discretionary. It is intended that this paragraph be used at the discretion of the Secretary to rectify gross inequities which may become evident as the Fund gains experience; for example, those exceptions where substantial expenditures are attributed to a substance but releases of the substance are not caused or contributed to by one of the several industrial categories who generate or use it.

The Secretary may distinguish between industrial categories in several ways. He may: (a) designate certain industrial categories as subject to a fee of zero, or (b) designate certain intermediates or final products as subject to a fee of zero, or (c) designate the primary petrochemical, inorganic raw material or petroleum oil subject to a fee of zero and impose the fee only on specified intermediates or final products made from that primary petrochemical, inorganic raw material or petroleum oil.

While the Secretary has discretion in determining where it may be appropriate to consider differentiating the fee by industrial category, the Secretary is required to modify the fee for a particular industrial category where it is determined that the three statutory criteria in paragraph (2)(C) are met.

The first criterion in paragraph (2)(C) requires that the industrial category not have contributed significantly to Fund expenditures by releases from its own activities or those who supply the substance, its intermediates or final products to the industrial category.

The second criterion in paragraph (2)(C) requires that the substance, its intermediates, final products or wastes as commonly used or generated by the industrial category, not have been present significantly in releases from hazardous waste storage or disposal facilities. The second criterion insures that the historic lack of information on who placed what wastes at hazardous waste storage and disposal facilities not preclude payment of a fee if there is reason to believe, but not conclusive proof, that the industrial category may have been the source of the released hazardous substances. This criterion is intended to protect against shifts in the fee burden to other industrial categories if there is reasonable evidence to conclude that a particular industrial category may have cause or contributed to releases of unknown origin.

The third criterion in paragraph (2)(C) is intended to insure that if an industrial category is made subject to a fee of zero, this action will not prevent other industrial categories who pay a fee on that substance from passing the fee on through the chain of commerce to ultimate consumers. Without such a test, paragraph (2)(C) could increase inequity in the fee system by requiring some industries to absorb the fee rather than distribute it to consumers of the substance.

Because court challenges to the regulations establishing or modifying fees could be lengthy, any interference with the imposition of fees while a challenge was pending could have a serious impact on the ability to keep the Fund sufficiently financed. Therefore, paragraph (c)(2)(B) provides that any stay of regulations relating to the fees is prohibited until completion of judicial review.

Based upon testimony and information supplied by the fertilizer production industry during development of the Act and after consideration of the criteria in subsection (e)(2), the fertilizer production industry is conclusively presumed in subsection (e)(3) to not impose significant costs upon the Fund prior to the first adjustment period for the fee.

A salient portion of the industry's testimony is the statement by Edwin Wheeler, president of the Fertilizer Institute, that:

> "* * * the fertilizer industry has not been a contributor to the problem of abandoned and inactive waste disposal sites, and is not a significant contributor to the hazardous substances spill problem * * *"

The Committee notes that certain acids, which are used as feedstocks in the manufacture of some fertilizer products, are also used for processes in other industries. As spent process chemicals, these acids are upon occasion discovered in dumpsites, where they can pose serious problems. In setting levels of fees, the Committee therefore chose to retain fees on those portions of acid production which find their way into processes in these other industries. In addition, it was decided that the first three years' experience of the Fund would be the most appropriate basis for judging whether fertilizer chemicals or feedstocks used in fertilizer production significantly contribute to spill problems or other releases needing government response. A fee rate of zero is as-

signed to ammonia, phosphoric acid, nitric acid and sulfuric acid supplied to, generated by and used or disposed of by the fertilizer production industry in the first three years after the fee system is first initiated. Nonfertilizer production usage of these substances are not exempt from fees. The term "fertilizer production industry" as used in the bill is to read to include those activities and products described and set forth in the Standard Industrial Classification Manual (OMB, 1972 Edition) and identified therein as SIC Code Nos.: 1474, 1475, 2873, 2873112, 2874, 2874185, 28193, 2810922 and 2819331.

Subsection (e) (4) clarifies that in the first three years of fee collection, the fee on copper will only be imposed on the equivalent weight of copper in copper sulfate, cupric oxide and cuprous oxide. The fee is to be imposed only on these three copper compounds when they are sold by a supplier to any other person, or used on-site to produce other materials besides copper metal. Beginning three years after the fee is first initiated, subsection (e) (4) authorizes the Secretary of the Treasury to impose the fee on additional copper compounds or on copper as an element if necessary to better reflect the expenditure experience of the Fund. In making any decision whether to modify the fee by rule the Secretary is required to consult with the Administrator of EPA. In examining the expenditure of the Fund, the five criteria considered in designating substances subject to the fee shall be considered for copper and its compounds.

The technical judgments of the Secretary of the Treasury and the Administrator of EPA are to be accorded broad discretion and deference in implementing subsection (e). Such discretion and deference are appropriate because of the properties of the chemicals involved, the circumstances in which they are encountered, limitations in available analytical techniques, the need to minimize risks to response personnel and nearby populations. Protection of public health, welfare, and the environment take precedence over all other government responsibilities in a release of hazardous substances. It is not the intent that subsection 5(e) result in a shift of the burden of the fees to a relatively few, easily identified substances, such as oil or heavy metals, and away from substances which are not readily identified (e.g. acids, caustics, reactive hydrocarbons) because they volatize, have short half-lives, are chemically unstable, easily alter chemical composition when in the presence of other reactive chemicals, etc. The Administrator is expected to consider such factors which may increase inequities rather than diminishing them when advising the Secretary on whether to make any adjustments to the fee system.

Subsection (f) (1) would provide suppliers an economic incentive for the recycling and reuse of primary petrochemicals and inorganic raw materials. The Secretary of the Treasury, after consultation with the Administrator of EPA, may by rule reduce the fee in proportion to the extent that any primary petrochemical or inorganic raw material is produced solely as a by-product of pollution controls and used on-site or sold to other persons. Included within the purview of this section is that sulfuric acid produced from pollution control equipment (i.e. acid plants) used on smelters to clean up emissions of sulfur dioxide gas under the Clean Air Act. These plants convert sulfur dioxide gas into concentrated sulfuric acid. Of the 37.9 million tons of sulfuric acid produced in 1979, only 2.89 million tons (or 7.6 percent)

came from the pollution control equipment on copper, lead, or zinc smelters. Most of this sulfuric acid is sold on the open market at a loss. This is because most smelters are located in isolated desert areas far from commercial markets for sulfuric acid, and the added transportation costs makes the acid economically unattractive.

Though the suppliers of primary petrochemicals, acting on behalf of the Fund, are required to collect fees from consumers of primary petrochemicals, where a portion of the petrochemical may also be used for a purpose that is exempt under subsection (f)(1), e.g. when used as a fuel, the consumer will be responsible for certifying to the supplier the amount of the primary petrochemical subject to the fee. Collection of such fees is intended to be compatible with the standard accounting practices of the supplier. This clarification is necessary, when the supplier in such circumstances knows only how much primary petrochemical was supplied and does not know to what uses it will be or has been applied. In such cases where a consumer must certify to the supplier the amount of the primary petrochemical subject to a fee, the consumer, rather than the supplier, would be responsible for the accuracy of such reporting in the event there is subsequent litigation. The supplier responsible for collecting the fee should be the person from whom the consumer of the primary petrochemical directly purchases the primary petrochemical.

The term "primary petrochemical" and "inorganic raw material" may not include any other substances other than those named in the definitions. The Committee does not intend to include coal-derived primary petrochemicals within the meaning of "primary petrochemicals". In the event that a primary petrochemical is taken from a liquid or gaseous stream containing other chemicals, computation of the fee shall be based only on the primary petrochemicals in the stream that are subject to fees under the Act.

The term "supplier" applies to any person who supplies specifically the substances identified as primary petrochemicals or inorganic raw materials. "Supplier" is not intended to refer to a person who may mine ores containing such substances, extract from the earth petroleum or natural gas containing such substances, or transport such ores, natural gas or petroleum. Such persons do not become "suppliers" unless or until they separate and process the specific primary petrochemicals and inorganic raw materials from the ore, natural gas or petroleum and supply the substances subject to the fee to others or use them themselves to generate intermediate products, final products or wastes. Where a primary petrochemical is taken from a liquid or gaseous stream containing other chemicals the "supplier" is that person who removes or separates the primary petrochemical from the liquid or gaseous stream and uses it to make more complex chemicals.

Livestock, Fishery, and Agricultural Product Coverage

Under paragraph (N) and (O) of section 6(a)(1), the Fund may be used to compensate an agricultural producer or processor or a commercial fisherman or fish or seafood processor for loss of income or capital loss due to destruction, loss, condemnation, or restriction on use resulting from a release of a hazardous substance. The provision allows compensation of agricultural losses since January 1, 1974, and fishing and seafood losses since January 1, 1978.

Testimony and subsequent investigations revealed that the production of food is affected frequently by releases of hazardous substances, and that such releases can have catastrophic effects on the livelihood of individual food producers and processors. It was necessary, therefore, to provide compensation from the Fund for the losses suffered by food producers and processors. The availability of such compensation will create an incentive to early reporting of such incidents, which will afford greater protection of the public health and reduce the spread of losses, particularly those occurring as a result of feed contamination.

Under this provision, the Fund would compensate both income and capital losses of food producers resulting from condemnation or restriction of use when a public health agency determines it to be necessary as a result of a hazardous substance release. "Public health agency" means any Federal, State or local body with the responsibility and authority to condemn or restrict products or the use of land or facilities under police or regulatory authorities arising from a release of a hazardous substance.

Different effective dates are provided for the authority of the Fund to compensate agricultural losses and fishing losses. For losses due to condemnation or loss of use of the following products and resources, the release must have occurred after January 1, 1974:

> pastureland, rangeland, or forestland; crops and croplands; bees, honey, and honeycomb; livestock; poultry and eggs; produce; grain; animal feed, including fish meal; and foods processed from any of these sources.

For losses of fish and shellfish stock, harvested fish and shellfish, seafood, and fish and seafood products (other than animal feed), the release must have occurred after January 1, 1978.

The provision does not cover single-cell proteins grown using alcohol or oil products, or processed foods for human consumption that include such proteins.

For the purposes of this provision, "loss of income" means actual lost sales plus any indirect losses or costs, other than capital losses, arising from a condemnation or restriction of use. For example, if as a result of a release of a hazardous substance the U.S. Department of Agriculture determines that meat packing operations in a given area must be temporarily halted, and as a result farmers and feedlot operators must continue feeding animals which were otherwise scheduled to be harvested, then the additional cost of grain borne by such farmers and feedlot operators is a compensable loss.

If a processor who is also a producer suffers a loss on its own produced (but not yet processed) commodities, then for the purposes of this provision, the income loss shall be:

(1) The arm's-length market price of the commodity in the region or area in which the release or contamination occurred; or

(2) The average of prices paid by that processor to other producers from whom it buys in arm's-length transactions in the region or area in which the release occurred; or

(3) The actual cost of production, whichever is least.

For the purposes of this provision, "capital loss" means the actual lost value of land, buildings, vessels, docks, machinery, equipment, or other facilities which are destroyed, rendered useless, or reduced in

value as the result of a condemnation or restriction of use arising from a hazardous substance release.

This provision creates exceptions to three other limitations upon the uses of the Fund. Section 6(a)(4) precludes use of the Fund for payment of any claims for third-party damages, including lost income, capital losses, and loss of use of natural resources, arising from the field application of a pesticide. This provision was proposed in subcommittee and was endorsed by the joint subcommittee as a provision sent to the Full Committee for consideration. The Full Committee subsequently adopted the provision providing for use of the Fund to compensate agricultural and fishing losses with the intention that it be an exception to the prohibition on use of the Fund to compensate for losses due to field application of pesticides.

In addition, section 6(a)(3)(B) limits payments from the Fund for lost wages or other personal income to 100 per cent of losses in the first year and 80 per cent of losses in the second year. It is the intent of the Committee that this limitation not apply to agricultural and fishing losses under section 6(a)(1)(N).

Finally, the Committee adopted a provision in section 4(n)(2) prohibiting use of the Fund to compensate victims who suffered losses due to releases prior to the date of enactment. The specific dates of the agricultural and fishing loss provisions apply to these losses.

Agricultural claims are to be limited to those claims which are not compensated by insurance or under other government programs.

Claims Procedure

The basic procedure for claims against the Fund is provided by section 6(b), (c) and (d) of the Act. The purpose of the claims process is to assure prompt payment of valid claims where the claimant has been unable to obtain satisfaction from a liable party and has elected to pursue his claim against the Fund, rather than in a court action against the liable party for the same costs or damages. The President is given latitude in promulgating specific procedures aimed at achieving this end. It is intended that the procedures be as streamlined as possible, consistent with the necessity of fairly assessing the validity of claims presented and with sound financial accountability.

Where the Fund pays removal costs or for damages, it is subrogated to the rights of the claimant, and the President is to request the Attorney General to commence an action on behalf of the Fund to recover the amount of such payment from any liable party. As described in the section of this report entitled "Liability", recovery of such compensation occurs under the provisions of liability established in section 4, except where specifically precluded, in which case recovery may proceed under the authority of any other statutory or common law.

Under section 6(b)(1), (2) and (3)(A) the President is authorized to designate by rule Federal officials who may obligate money in the Fund. The President is also authorized to delegate administration of his duties and authorities to the appropriate units of the Executive Branch of the Federal government. The uses of the Fund authorized in section 6(a) include Federal government costs of implementing the Act and claims for removal costs and damages paid to others. Of course, payment of the government costs are subject to appropriation

Acts and are not intended to be subject to the claims procedure for claimants seeking third party damages and cost of removal, since this would preclude the government from providing timely response as intended by this Act and since some of the costs of operating the government program are not attributable to any particular liable party or incident of release, discharge or disposal. It is intended that the President duplicate under the authority of section 6(b)(1), (2) and (3)(A) procedures similar to those which have already been developed to administer the fund established in section 311 of the Clean Water Act. In this way, immediate government response can be assured.

Under section (b)(3)(A) the President is also authorized to promulgate and amend regulations for the presentation, filing, processing, settlement, and adjudication of claims which are compensable by the Fund under subsection (a). The regulations should prescribe appropriate forms and procedures for such claims, including a provision requiring the claimant to make a sworn verification of the claim to the best of their knowledge.

In addition to the general grant of authority in subsection (b)(3)(A), specific procedures are set forth.

Whenever any person alleges to the President that he has incurred damages which are compensable by the Fund, the President is to notify the appropriate liable party under section 4 of the Act, and any such person may, within 15 days of such notification or within 15 days of the presentation of a claim by a claimant, deny the allegations or deny liability for any of the reasons contained in section 4(a). The presentation of claims is facilitated by a requirement that the owner and operator of any vessel or facility from which a hazardous substance is discharged or released provide notice to all potential injured parties.

In all instances the claimant is required to first present his claim to the potentially liable person or persons, if known, prior to pursuing any right under this section. If the claim is not satisfied, the claimant, or in the case of death, the estate of such person, may then elect either to pursue his remedies in the courts or present his claim to the Fund.

With respect to claims for medical costs, the administrator of the Fund is given additional specific guidance. Such claims are to be reviewed promptly, and an order denying or certifying the claimant's injury is to be issued within ninety days. The Fund administrator is authorized to require documentation, verification, and authentication of the amount of the claim and to order any medical tests or examinations of the claimant deemed necessary to confirm the claimant's injury or diagnosis. The claimant is to be paid his certified costs within sixty days of certification by the Fund administrator.

Except in extraordinary circumstances where adequate private insurance and claims adjusting agencies or State agencies are not available, the President is to utilize such agencies in processing claims against the Fund. He is authorized to establish the procedures for processing the claims and to compensate the agencies for their services. It is expected that any procedure the President sets out will be conducive to speedy, informal settlement. For example, the administrator may attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and the alleged liable person can agree upon a settlement, then the settlement would be final and binding upon the parties and further recourse against

the Fund would be considered waived. If, however, no settlement is reached through negotiation, the Fund administrator may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim from the Fund. If at any time it is determined that, because of a large number of claims arising from any incident, it is in the best interests of the parties concerned, the claims may be grouped for purposes of settlement, award, and appeal. If no settlement can be reached or acceptable award decided upon within the time provided in the Act for certification of medical claims, or, in the case of other compensable claims, within a reasonable time period set out by the President, a procedure for resolving disputes is provided.

The President is authorized to appoint one person as an arbitrator or to establish a panel of arbitrators (for a period not to exceed 180 days each) as necessary to hear and decide disputes concerning claims filed pursuant to this section. The President may appoint as many persons as arbitrators as he determines will be necessary to implement this subsection expeditiously and can increase or decrease the number in response to the demand. The arbitrators may be appointed from the private sector or any Fedearl agency employees except the staff administering the Fund or otherwise implementing this Act. It is anticipated that whenever possible, arbitrators would be selected through utilization of the procedures of the American Arbitration Association. Persons appointed as arbitrators are entitled to compensation and travel and other reasonable expenses in carrying out their duties.

It is intended that any hearings before an arbitrator or a panel will be informal and open to the public, and that the rules of evidence prevailing in judicial proceedings will not be required. The arbitrators, pursuant to procedures set out by the President, should have the power to administer oaths and to subpoena the attendance and testimony of witnesses and the production of evidence. Testimony, in keeping with the informal procedure envisioned, could be taken by interrogatory or deposition.

In any determination to be made by the Fund administrator or by an arbitrator or a panel, the claimant will have the burden of establishing his claim. In the case of a claim for out-of-pocket medical expenses, for example, the burden would consist of establishing to the administrator's or the arbitrator's satisfaction (1) that the claimant was exposed to a hazardous substance found in a release; (2) that the exposure was in such quantity or for such a duration that there is a reasonable likelihood that it is sufficient to cause or significantly contribute to injury or disease of the class or type of which the claimant complains; (3) that there exists a reasonable likelihood that exposure to the hazardous substance causes or significantly contributes to injury or disease of the class or type which the claimant claims to have suffered; (4) that the claimant has incurred out-of-pocket medical expenses as a result of the injury or disease; and (5) that the expenses are in the amount claimed.

If arbitrators feel that additional investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding a claim, they could request the President to un-

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dertake such activities pursuant to his authority under section 3(c)(3)(C) of the Act. The President would grant or deny any such request, based upon his assessment of the competing demands and the availability of the technical and financial capability which exists to undertake such activities. If the President decided to undertake any further investigations, it is expected that the usual time limits for determining claims would be suspended pending the results of the investigation.

The arbitrator's or panel's decision should be rendered within a reasonable time, to be specified by the President in the procedures established for the processing of claims. Any party dissatisfied with the decision should be able to appeal it to a federal district court of competent jurisdiction.

In the case of such an appeal, it is intended that the court give appropriate deference to the arbitrator's or the panel's ruling and that the court not overturn it except in the case of arbitrary or capricious abuse of discretion. Because of the informal nature of the determinations envisioned for claims, any decision by an arbitrator or a panel would not be considered admissible as evidence of any issue of fact or law in any judicial proceeding except an appeal under this section, although data adduced in the processing of claims under this section will, of course, be admissible pursuant to the ordinary rules of evidence.

It should also be noted that under section 5, if the total claims outstanding at any time exceed the current balance of the Fund, the President may, in his discretion, defer payment of all claims or of any class of claims, make partial payment on a prorated basis to each affected claimant, or provide, through regulation, for the payment of claims on a priority basis determined by relative hardship to claimants.

It should in addition be noted that the legal remedies in this Act are cumulative and not exclusive. Nothing in this Act requires pursuit of any claim against the Fund as a condition precedent to any other legal right. Notwithstanding any other provision of law, nothing contained in this Act prohibits a person from bringing a suit in a court of competent jurisdiction to recover for any damages or costs compensable under any other law. However, under section 8(b), any person who receives compensation for removal costs or damages pursuant to this Act is precluded from recovering compensation for the same removal costs or damages pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages pursuant to any other Federal or State law is precluded from receiving compensation for the same removal costs or damages pursuant to this Act.

Section 6(c) establishes a right of subrogation on the part of the Fund or other persons who pay compensation under the Act and provides that, on the request of the President, the Attorney General must commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to the Act, and for any costs incurred by the Fund by reason of the claim (such costs, which include, *inter alia*, interest, administrative, and adjudicative costs, are not subject to any limitation of liability set out elsewhere in the Act).

Section 6(d) establishes that the Fund is not to be used to pay for any claim to the extent that the discharge or release involved, or the

damages incurred as a result thereof, was caused by the gross negligence or willful misconduct of the claimant.

Finally, section 6(g) cautions that where government response under section 3(c) has not been undertaken or where the release, discharge or disposal constituted an inconsequential danger to public health or welfare, the Federal government should not seek damages or bring an action to recover *de minimus* damages under this Act.

Natural Resource Damage

The Committee found during its own hearings and from Committee-requested research by the Library of Congress (Report No. 96–13) that damage to natural resources due to releases of hazardous wastes is a very serious problem. In many instances the ramifications for the environment from such releases can be regional or national as well as local in scope. The Committee received testimony indicating that both short- and long-term damages to natural resources resulted from releases of hazardous substances and that standardized techniques for assessing both the biological and economic damages from such releases should be developed. Testimony also indicated that it was appropriate and necessary for the State or in some instances the Federal Government acting as trustee for such resources to seek restitution for such damages or restoration of such resources.

LIABILITY FOR DAMAGE TO NATURAL RESOURCES

In order to preserve the public trust in the Nation's natural resources, S. 1480 establishes strict liability for:

(1) Any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(2) Any loss of use of any natural resources without regard to the ownership or management of such resources;

(3) Any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of natural resources without regard to the ownership of such resources.

Section 4(b) of S. 1480 states that in the case of injury to, destruction of, or loss of natural resources liability shall be to the United States Government and to any State for natural resources within the State or belonging to managed by, controlled by, or appertaining to such State. In such cases of harm to natural resources the President, or the authorized representative of any State, shall act on behalf of the public as trustee in recovering for such damage, injury, or loss of such resources. In recovering for resource damage under S. 1480, a State acting as trustee will have rights and responsibilities similar to those of an individual claimant under the legislation. As directed in section 6(b)(3)(D), a claim for harm to resources shall in the first instance be presented to the person assumed responsible for such harm. If this claim is unsatisfied, the State or Federal Government may elect to commence an action in court or to present the claim for payment from the Fund. Monies from the Fund should be available to a State or the appropriate Federal agencies for use to restore, rehabilitate, or acquire the equivalent of such resources which have been

injured, lost or destroyed. It should be noted, however, that in a case where the election to pursue an action under this legislation in court is chosen, the measure of such resource damages shall not be limited to the sums which can be used to restore or replace such resources.

In the case where the trustee elects to apply to the Fund for damage to natural resources, a claim must be presented to the Fund and the Fund Administrator is required to promptly review such claim and either certify or deny certification as to such injury. When the Fund makes a payment for resource damage, the Attorney General, at the request of the President, can commence an action on behalf of the Fund to recover an amount equal to the compensation made by the Fund from such parties as may be responsible for such resource damage.

It should be noted that the Committee intended that actions to restore, rehabilitate, or replace natural resources under the provisions of this Act be accomplished in the most cost-effective manner possible. Section 6(f) of the reported bill should help in attaining this goal. This provision mandates that, except in cases where emergency measures are necessary, no restoration action concerning resource damage may take place until a plan outlining the steps to be taken has been developed and adopted by the affected Federal agencies and the Governor or Governors of any State or States where damage to resources has occurred. The process of developing such a plan will be of great assistance in avoiding unnecessary costs involved in restoring, rehabilitating, or replacing natural resources.

NATURAL RESOURCE DAMAGE ASSESSMENT

Investigations by the Committee on Environment and Public Works revealed the need for an improved, fair and expeditious mechanism for dealing with natural resource damages caused by releases of hazardous materials. The principal hindrance to attaining such a mechanism was the absence of a standardized system for assessing such damage which is efficient as to both time and cost.

The reported bill provides in section 6(e) that those agencies with management and protection responsibilities over natural resources should standardize a process through regulation for assessing damages to those resources. This could be done after a thorough review of alternatives for damage assessment. This approach will focus on scientific debate concerning damage assessment in the rulemaking process and result in a decision regarding the best simplified procedures for making accurate and defensible assessments of resource damages.

The rulemaking process would be carried out jointly by the Environmental Protection Agency, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration in cooperation with various State governments. Hearings concerning the rulemaking might be carried out on a regional basis.

The rulemaking should produce a range of products. At one end will be simplified assessment procedures requiring a minimum of fieldwork and using a combination of habitat values, species values, and other simplified methods. Such procedures would be of value in dealing with minor releases. At the other end of the range would be damage assessment protocols to be used whenever the extent of natural

resource damage is substantial and extensive fieldwork becomes necessary. The assessment procedures and protocols should include a choice of acceptable damage assessment methodologies to be employed, with the evidentiary status of a rebuttable presumption accorded to the results when the protocols are followed.

There is a need for maximum flexibility in the rulemaking proceeding, so that free scientific discussion will result. Only through this type of discussion will the agencies be adequately prepared to select the most accurate and credible damage assessment methodologies available.

Since the state of the art of damage assessment is a complex matter, a time limit of two years is provided for issuance of initial regulations. Since knowledge in this subject is constantly changing, the regulations will be reviewed and updated on a regular basis every two years.

This subsection calls for the promulgation of two types of regulations. First, a simplified type of regulation is necessary to effectively deal with damage assessment in most "minor" releases of hazardous materials. Natural resource damage assessments based on this type of regulation should require as little fieldwork as possible, and rely on a combination of habitat values, tables of values for individual species, and previously conducted surveys and laboratory studies, related to units of discharge or units of affected area.

The other type of regulations would be employed in large or unusually damaging releases and would be used to guide the site-specific damage assessment. Such a regulation would contain protocols for field assessment of the type and extent of short- and long-term damage and methodologies for determining their value.

The protocols for field assessments should provide uniform instructions that will allow for thorough site investigation in a cost effective manner. Sampling and statistical procedures should be clearly defined. The methods for determining the geographical extent of damage should also be enumerated. It is the intent of the legislation that these protocols be designed to accommodate the majority of potential release sites, including coastal estuaries, open water, freshwater rivers, lakes and wetlands. The classification system of the national wetlands inventory should be of help in accomplishing this task and it should be used to the extent practicable in developing these protocols.

The regulations must also contain procedures for assessing the value of direct losses of organisms and their habitat and indirect losses of organisms and habitat through ecological interactions. The procedures for these types of monetary cost assessments are sometimes hard to define, but the agencies must review procedures available for completing these analyses and make a decision as to which are the most accurate and efficient for accomplishing the mandates in this legislation.

The reported bill also assigns the responsibilities for assessing damages to natural resources among three Federal agencies. The National Oceanic and Atmospheric Administration for marine resources, the Environmental Protection Agency for freshwater and estuarine resources landward of the baseline of the territorial sea, and the Fish and Wildlife Service for living resources and their supporting eco-

systems over which the Service has management or conservation authority, are designated as the agencies responsible for assessing damage and bring natural resource damage claim on behalf of the United States. Where State governments are the public trustees, the National Oceanic and Atmospheric Administration, the Environmental Protection Agency or the Fish and Wildlife Service can make assessments and bring claims on behalf of any State at the request of that State's Governor. There is nothing in this bill that precludes a State from carrying out its own natural resource damage assessments, provided that the State conforms its assessments to the regulations issued under section 6(e)(1)(A) of this Act.

The bill delineates agency responsibility to prevent duplication of effort and allow sharper focus on major environmental components. The U.S. Fish and Wildlife Service has responsibility for damage assessment research for fish and wildlife and their supporting ecosystems in freshwater, estuarine areas and marine waters except where the National Oceanic and Atmospheric Administration clearly has defined authorities for these resources either through Executive order or legislative mandate. The Environmental Protection Agency should have responsibility for water quality and drinking water supply aspects of damage assessments, including human health considerations.

It is the Committee's intention that the damage assessment personnel within the three agencies will be recruited specially for the tasks required in administering this act, and that they should work together to the maximum extent possible in developing these regulations and performing assessments in order to facilitate a close, cooperative, and efficient working relationship among the three agencies involved.

The process of damage assessment, particularly the evaluation of long-term or delayed impacts on biological systems, will entail research activities. It is envisioned that the three agencies will enlist the services of outstanding experts in performing damage assessments where regional fisheries or other biological resources are impaired. These research provisions of the bill are not designed to be applicable to any activity, including research, necessary to perform a damage assessment on a specific release. These costs are covered under section 6(a)(1)(I).

DIRECTED RESEARCH ON NATURAL RESOURCE DAMAGE ASSESSMENT

The reported bill includes requirements for directed research that will provide information needed to carry out damage assessments and determine the value of lost resources. Recommendations for natural resource damage reparations must be based on the best information available, and must assure a fair and consistent approach. The major emphasis should therefore be on development of protocols, methodologies, and procedures that will provide tools for damage assessment and effects research where such work is deemed critical to damage assessment determinations. Research efforts should include, but not be limited to, development of ways to assess (1) long term damage to ecosystems, (2) chronic effects such as those affecting behavior, reproduction, or food supply that result in indirect losses, (3) predictive capabilities to determine potential losses through trophic level interactions, and

(4) information on minimizing the damage caused by release control, dispersal, and cleanup operations, Research should be carried out both at field sites and in the laboratory.

This provision is designed to assure that a continuous and ongoing research effort is made to improve the methods and protocols used in evaluating release damage. The research program will improve the scientific bases for methodologies used in damage evaluation. In addition to research in technical disciplines, this program may include national conferences or other means of communications used to review and evaluate damage assessment methods.

LIABILITY FOR IRRETRIEVABLE COMMITMENTS OF NATURAL RESOURCES

In dealing with the issue of natural resource damage the Committee took note that in certain instances Federal officials make decisions in which resource trade-offs must necessarily be made, and in such cases liability for resource damage under this legislation should be limited. Specifically Section 4(b) contains a provision that no liability to the United States or any State for natural resource damage will accrue where the party sought to be charged under the Act has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environmental analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. For this provision to apply, a Federal agency in proceeding with an action or project must have completed a project- or action-specific environmental impact statement or similar analysis and such analysis must identify the resource damage which will occur from releases of hazardous substances if such action or project is carried out. In such a case where the specific resource trade-offs are understood and anticipated and in issuing the permit for such releases the agency takes into account this knowledge and allows the tradeoff, then no liability under this Act will accrue for resources damaged pursuant to those permitted releases.

This provision is not intended to expand in any way the authority of any Federal official to make irreversible or irretrievable commitments of natural resources. It also does not affect causes of action for damages to privately owned resources or for loss of use of publicly owned natural resources, under this bill or common law.

POST-CLOSURE LIABILITY

In order to assure that a hazardous waste management facility does not pose environmental or public health hazards after closure, and that any potential hazards can be promptly detected and remedied before they cause major damage, it is critical that these facilities be properly maintained and monitored after closure. Sections 4(j) and 5(k) of the reported bill establish a Post-Closure Liability Fund to finance the long term post-closure monitoring and maintenance necessary to protect human health and the environment for hazardous waste disposal facilities permitted and properly closed under subtitle C of the Solid Waste Disposal Act.

This Fund would also fully assume the liability of owners and operators of such permitted sites for any damages or cleanup costs which are incunrred by the site after closure.

The Fund should pay all costs for site restoration, economic damage and personal injury causd by the closed facility, both as recognized under this bill and claims arising under common law or other statutory law. In addition to the money set aside by the site operator during site operation to be available for routine monitoring and maintenance for the 30-year post-closure period, the Fund will pay for any further routine care and testing required and arranged by the regulatory body responsible for the facility after it closes.

The Fund will pay for post-closure monitoring and maintenance and assume liability for damages and cleanup expenses only where a facility has met the following three requirements. First, the facility must have been issued an individual permit under subtitle C of the Solid Waste Disposal Act. Facilities which close prior to the issuance of a final permit (i.e., while they are still in interim status) will not be covered by the Fund.

Second, the facility must have complied with each condition of its permit and applicable Subtitle C regulations relating to closure or affecting the performance of the facility after closure. This encompasses not only closure and post-closure requirements, such as applying cover and revegetating and monitoring the site, but also any other standard or requirement designed to insure the integrity of the facility or to prevent, minimize or monitor the escape of hazardous wastes or their constituents after closure (including, for example, requirements for liners, leachate collection and treatment systems, soil barriers, pumping facilities, and groundwater monitoring systems).

Finally, the facility and surrounding area must be monitored for up to 5 years after closure to demonstrate that there is no substantial likelihood that hazardous substances or hazardous waste constituents will be released into the environment or other risk to public health or welfare occur.

Hazardous waste management facilities will have active lives of 10–20 years during which they will be closely monitored by regulatory officials. Typically, these facilities are operated in phases such that the earliest sections will have been closed for many years before the site finally ceases operation. At the time of final closure, in addition, the subtitle C regulations provide a 6-month period during which intensive engineering is done at the facility to apply the final cover and contour and secure the site. It is not until this process is complete that the facility is properly closed. At this point, the facility operator must notify the Administrator of the Environmental Protection Agency that the facility has been properly closed and have an independent professional engineer certify that closure was properly completed. Under section 4(j) the Administrator will then have up to five years to determine independently that the site has been closed properly. By regulation, the Administrator can determine that a period shorter than five years is sufficient for facilities which, during their active lives, have been closed in cells or phases, closely monitored, and inspected frequently. The post-closure period for monitoring is provided so that the Administrator can test further if it is felt to be necessary or de-

sirable. This requirement is not intended to create a new standard—the facility is to be judged on compliance with the regulations and its closure order.

Section 4(j) provides that the Post-closure Liability Fund will automatically begin to cover a closed facility for all claims arising after that date, starting 90 days after the owner or operator has notified the Environmental Protection Agency that it has complied with the requirements outlined above, unless the Administrator determines that the site is not in compliance or that it has submitted insufficient information to determine whether it is in compliance. A determination that a facility is in compliance is voided at any time that the Administrator receives new information indicating that such determination was erroneous. If the Administrator has cause to believe the facility operator made fraudulent representation or knowingly or willfully violated his permit, the transfer of liability to this fund is cancelled and the Administrator is directed to seek to recover from the operator. The operator is released from liability only if he actually complied with the regulations and his permit and closure order.

These three requirements are intended to limit Post-closure Liability Fund coverage to those sites which have fully complied with subtitle C requirements and have a proven record of good performance. By so doing, this provision should be a significant monetary incentive to site owners and operators to design, construct and operate their facilities in an environmentally sound manner, and to fully comply with all subtitle C requirements. At the same time, limiting fund coverage to low-risk sites should substantially reduce the likelihood that the fund will be significantly depleted by a single incident.

During consideration of this provision, the question arose whether having such a fund pay all post-closure damages would lessen the incentive to operators to exercise due care in the way they manage the wastes. It is expected the regulatory program itself will assure a high standard of care. Beyond that, access to this fund is available only to facilities with final subtitle C permits who have completed proper closure. For others, owners and operators remain fully liable for their facilities, and all are liable for anything occurring during operations. Rather than a disincentive to proper operation, the liability fund mechanism offers an additional "carrot" to supplement the regulatory "stick" to promote proper operation.

With the vast quantities of hazardous wastes which will be subject to regulation for the first time under the subtitle C program of the Solid Waste Disposal Act, this nation will need, in the very near future, 50–60 additional regional hazardous waste management sites with specialized facilities for proper handling, treatment, and disposal of hazardous wastes. The private sector must contribute much of this new capacity and needs to begin developing these facilities now. Such facilities are expensive and require 3 to 5 years for development and construction.

Development of this capacity, however, is being delayed and complicated by public opposition to these sites, and by the unavailability of meaningful insurance coverage for the post-closure period. Creation of a post-closure liability fund offers part of the solution to the problem of siting the additional facilities necessary to meet the Nation's hazardous waste management needs. Assurance that funds are readily

available to clean up and restore problem facilities and to pay future claims for property damage or personal injury will reinforce public confidence. This, along with strict regulatory standards and enforcement will add considerably to public confidence that hazardous wastes will be managed safely. Also, creation of a post-closure liability fund such as outlined above would enable private companies to manage their liabilities and attract the tens of millions of dollars in investment capital which will be necessary to build the next generation of modern hazardous waste management facilities. Without such a fund, responsible companies may seek more manageable risks and pressure will build on municipal, State, and even the Federal government to shoulder the burden of providing these additional facilities.

Section 5(k) creates a $200 million fund which would be replenished by upward adjustments of the fees schedule, if necessary, so that funds would always be available to meet monitoring and maintenance costs or satisfy judgments. The Environmental Protection Agency is directed to conduct a 3-year study on the adequacy of this amount so that the Congress might reexamine this question in several years. It is unlikely that this fund will be required for several years. It could be several years before many permits are granted under subtitle C. Since it makes little economic sense to make the huge investments to obtain a permit (including taking on liability for the 30-year post-closure monitoring responsibility) for a facility with only one or two years remaining, any permitted facilities will probably operate for several years. In addition to the years of operating life, there would be the period of closure and then the potential 5-year period before the transfer to the liability fund would actually occur. Thus, there is no immediate need to be exact at this time in determining the amount of the fund. Two hundred million dollars, to be collected over the first five years after enactment, is an appropriate initial level.

The fund is financed by fees on each unit of hazardous waste which is received by a permitted or interim status facility and which will remain at such facility after closure. Because facilities which do not remove wastes and waste residues prior to closure (e.g., landfills, land treatment facilities, surface impoundments) pose the greatest post-closure health and environmental hazard, it is appropriate to require them to finance the fund. The assessment of fees only on this category of wastes is intended to have the effect of discouraging disposal as a waste management practice and thereby reduce the amount of waste which is handled in a manner which could pose a long-term environmental danger.

The Administrator has broad discretion in establishing this fee. He may choose whatever fee unit (e.g., volume, weight) he deems appropriate. He may set a uniform fee for each unit (other than those of wastes with large volume and relatively low hazard) or he may establish waste-specific unit fees based on the relative hazards posed by the wastes subject to the fee. Even if the Administrator chooses this latter route, he has substantial leeway in setting fees for individual wastes. There are recognized difficulties inherent in establishing a fee system which attempts to rank wastes according to the nature and degree of hazard they present, and it is not expected such a system under this provision could do anything more than draw very rough distinctions among classes of wastes.

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Financing Responsibility

Too often the individuals engaged in the manufacture, transportation, use, or disposal of hazardous substances are financially irresponsible. This has been especially true of persons engaged in hazardous waste disposal, whether they are real persons or corporations. In some cases, the assets consist only of a truck that may be rented. When a corporation has been created, the directors and officers are often shielded from personal liability.

To help prevent this, section 7 of S. 1480 requires those engaged in businesses involving hazardous substances to maintain evidence of financial responsibility commensurate with the risk which they present. This requirement is modelled on similar provisions in the Clean Water Act and the Solid Waste Disposal Act.

In order to avoid severe dislocations and unwarranted intermodal transportation shifts, the requirements other than for vessels are to phase in gradually. The first ones are to be promulgated no sooner than five years after enactment and even then they must phase in over no fewer than three additional years. This phasing was drafted in consultation with representatives of the domestic insurance industry to assure that as the need arose, commercial insurance would be available.

Section 7 provides that the financial responsibility requirements of section 311(p) of the Clean Water Act are to be the model for financial responsibility under this bill, with certain changes and exceptions. For vessels, the financial responsibility requirement is increased to $300 per gross ton or, for a vessel carrying hazardous substances as cargo, the greater of $300 per gross ton or $5,000,000. The existing limits under section 311(p) are $150 per gross ton or $125,000.

The bill requires also that facilities maintain evidence of financial responsibility consistent with the degree and duration of risks associated with the production, transportation, treatment, storage, and disposal of hazardous substances. These requirements are in addition to the financial responsibility requirements promulgated under the authority of section 3004(6) of the Solid Waste Disposal Act. It is not the intention of the Committee that operators of facilities covered by section 3004(6) of that Act be subject to two financial responsibility requirements for the same dangers. The purpose of this provision is twofold: first, to extend financial responsibility requirements to facilities and transporters who are not now covered by any requirements under section 3004(6), and second, to create authority for phasing in financial responsibility requirements for facilities and transporters.

Section 7 provides for a delay of five years from the date of enactment before the financial responsibility requirements for facilities would be promulgated. The requirements would be imposed first on those classes of facilities which have the highest and most frequent damages. The government is required to identify these groups and publish this finding three years after enactment, thus providing two years' notice of which groups will be first subject to the requirements. Once the financial responsibility requirements are developed, they would be phased in over a period of no fewer than three years and no more than six years. The purpose of this approach is to allow time for

the accumulation of information while keeping this market open to commercial insurers. There will be five years in which claims experience can be built up, then another three-year period in which insurers can gradually enter the market.

The problem of insurability is also dealt with in subparagraph 6(b)(3)(E), relating the obligations of guarantors.

It should be clear that section 6(b)(3)(E) should not operate to encourage any guarantor to delay settlement, or increase the difficulty in filing or receiving proper claims. In the event a guarantor raises roadblocks or causes other inappropriate delays in payment of claims, the body of law imposing payments of claims greater than policy limits would continue to apply as a disincentive to such bad insurance practices.

Worker Protection

The bill contains a series of provisions to assure that workers responding to hazardous substance releases are safe from the substance they are cleaning up and are paid fair wages.

Under section 6(a)(2)(A)(v), States and their contractors are required to make use of the procedures in the revised National Contingency Plan to protect workers involved in response actions. Section 6(a)(1)(P) provides for the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health to be consulted during revision of this plan by the Environmental Protection Agency in order to establish worker protection procedures for land-based releases and dumpsites, as well as spills to navigable waters, and section 3(e) requires the Administrator to comply with Federal health and safety standards in contracts for response.

Also, the bill requires under section 6(j) that workers used by Federal and State governments and their contractors in responding to hazardous substance releases be paid prevailing wages, as determined by the Secretary of Labor, under the Davis-Bacon Act.

Section 10 of the bill forbids an employer from firing or otherwise discriminating against an employee who reports hazardous substance releases or provides information in legal proceedings, and provides a grievance procedure for cases in which such discrimination is alleged.

These kinds of releases are often extremely serious public health emergencies that can go undetected if they are not reported. People could be drinking water contaminated with extremely dangerous chemicals for months or years and not know it. The worker who sees such a threat being created has a public duty to report it. And he has a public duty as a citizen to appear in the proceedings and tell the facts about what he knows.

Without this amendment, the worker who knows of a release is in jeopardy of losing his job for protecting his fellow citizens. The Love Canal incident demonstrates the results of a serious release going unreported for years. There have been miscarriages, deformed children, and a wide range of other ailments—preventable ailments. This provision is similar to provisions in the Clean Air Act, the Clean Water Act, and the Solid Waste Disposal Act. Its protection does not extend to a worker who deliberately violates a provision of S. 1480 without being directed to do so by his employer.

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WORKPLACE EXPOSURE EXCLUSION

Under an exception in section 2(16)(B)(i) to the definition of release, an injury caused by a hazardous substance exposure in the workplace is not a "release" under the bill if the employer of the injured party is liable under worker's compensation law.

The intent of section 2(16)(B)(i) is to exclude from compensation through the Fund, from liability under section 4, and from the notice provisions of section 3, an injury which is compensated through worker's compensation law.

The provision does not broadly exempt releases which occur solely within a workplace from the bill. For example, if a release occurring solely within a workplace created a hazard of damage to human life or to the environment, it is contemplated that the Fund would have authority to respond with all of its authorities except for compensating workers whose employers are liable for their injuries under worker's compensation law. In addition, the liability provisions of section 4 would apply to these response costs and to third-party damages (other than those for which the employer of the injured party is liable under worker's compensation law).

Further, the provision does not bar an injured worker from legal action under section 4 of the bill against any party other than an employer of that worker liable under worker's compensation law.

Two further issues were brought to the attention of the Committee during consideration of this provision.

One concern is that under some Federal and State worker's compensation laws, an injured worker who wins a judgment against a third party (such as the manufacturer of hazardous substance used in the workplace) can suffer an interruption of periodic compensation. This can occur when the employer has been paying benefits while the injured worker pursues a lawsuit against the third party. Under the Longshoreman's and Harbor Worker's Compensation Act and the Federal Employee's Compensation Act, the employer has a lien against any award for all worker's compensation benefits paid to the date of the settlement and would be free from paying future compensation until the proceeds of the settlement or judgment (including payments for pain and suffering) were actually exhausted as if the entire sum were compensation for lost income.

The second concern is that settlements between workers and third parties are, under some state worker's compensation laws, subject to approval by the injured worker's employer, even if the employer was not a party to the action as coplaintiff or codefendant.

Such provisions can work severely to the economic disadvantage of injured workers. Awards, settlements and the payment of claims under this bill, whether through the Fund or through the liability provisions of section 4, are immune from such provisions of other Federal law or State law. An employer who pays worker's compensation as a result of an injury for which an employee later receives an award or settlement from a third party is entitled (pursuant to this provision and subsection 8(b)) only to a lien for worker's compensation payments made or owed in the future, and the lien is allowed only against

that portion of a judgment or settlement made to replace lost wages and future earnings, not against any portion of a judgment or settlement for pain and suffering or other losses.

In addition, section 2(16)(B)(i) bars compensation from the Fund and through section 4 liability only when the employer of the injured worker "is liable" under worker's compensation law. A mere allegation of an employer's liability under worker's compensation law does not bar either compensation of an injured worker from the Fund or legal action by a worker against a third party under section 4. A finding of liability or a settlement accepting liability by the employer is necessary to come within this exception. In cases where the Fund has paid benefits to a worker injured by a hazardous substance release and the worker's employer is later held liable or consents to compensate the worker under worker's compensation law, the employer must reimburse the Fund for benefits the Fund had already paid in a manner that does not disrupt the disability income of the injured party.

Litigation and Conforming Amendments

Section 9(a) and (b) provide for jurisdiction and venue of actions brought under this Act. The Circuit Court of Appeals of the United States for the District of Columbia is given exclusive jurisdiction to review regulations promulgated under this Act. An application for such review must be made by an interested party within ninety days of promulgation or be barred. The United States district courts are given exclusive original jurisdiction over all other causes of action arising under this Act with venue lying in the place where the wrong or damage occurred or where the defendant resides, is found or does business.

Section 9(c) permits the survival of any hazardous substance litigation commenced prior to the enactment of this Act.

By explicitly stating liability rules in this statute, the Committee does not intend that S. 1480 in any way preempt or weaken any other law. All other remedies are to continue to exist after enactment of this bill, including those under common law, admiralty law, and Federal and State statutory law. This is important to note, in that while S. 1480 in many respects generally codifies existing law, in some specific respects its liability rules are more limited than those under existing law. For instance, while the Fund is precluded from using the rules of section 4 to seek recovery for cleanup costs or payment of damage claims for certain categories of releases, other remedies or provisions of the common law or any other law are available to the Fund and the Fund should use them to recoup its expenses.

Section 9(d) also transfers one half of the funds appropriated under section 311(k) and all the funds appropriated under section 504(b) of the Clean Water Act to the Fund created by section 5 of this Act. The Fund is made available to reimburse States for costs of removal of hazardous substances under section 311(c)(2)(H) of that Act. Guarantors of owners' or operators' liability under this Act are added to possible defendants whom the United States may sue under sections 311(f) and 311(g) of the Clean Water Act.

Section 9(e) provides that in any conflict between section 311 and the provisions of this bill, S. 1480 prevails.

EXECUTIVE COMMUNICATIONS

THE WHITE HOUSE,
Washington, D.C., June 5, 1980.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on the Environment and Public Works, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: One year ago, I proposed comprehensive legislation to protect the public health and environment from the hazards of careless and improper disposal of chemical wastes. Enactment of the "Superfund" bill is one of my top environmental priorities.

Since then, your Committee has provided crucial leadership in moving forward a Superfund bill. Now in the last hectic months of the 96th Congress, this legislation is in a race against time despite widespread support for it. I urge you to do everything you can to report S. 1480 by the July 4 recess.

A number of dramatic events during the past year have reinforced the urgent need for a strengthened emergency response program addressing oil and chemical hazards. The human suffering and financial costs associated with the Love Canal site are a national tragedy. We are concerned that there may be thousands of other sites around the country that also require emergency cleanup to prevent future disasters.

My Superfund proposal has two key features which any legislation you report should include: a strong system of liability to encourage responsible parties to undertake cleanup activities themselves, and assured funding of $1.6 billion over four years, of which at least 80 percent should be provided by industry contributions.

I commend the Committee's action in starting this process this week and am particularly pleased that the strict, joint and several liability provisions have been retained, as my Administration proposed. A strong liability provision will prove to be our most powerful incentive to obtain cleanup by responsible parties and is essential to effective legislation.

I know you share my deep concern about the dangers posed by abandoned hazardous waste sites. I have already mobilized my Administration to address the Love Canal tragedy and we will be prepared to implement the Superfund legislation as soon as the Congress passes it. The Superfund legislation must be enacted this Summer in order to prevent additional human suffering.

Sincerely,

JIMMY CARTER.

THE WHITE HOUSE,
Washington, D.C., February 4, 1980.

Hon. JENNINGS RANDOLPH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STAFFORD: Last June, President Carter submitted a legislative proposal to deal with one of the most important en-

vironmental and public health issues facing our Nation. The threat caused by the improper handling and disposal of oil, hazardous substances and hazardous wastes, such as the incidents at Love Canal and Valley of the Drums, have highlighted the inadequacy of the existing laws and inability of governments at all levels to respond quickly and efficiently to these dangerous situations. There may be thousands of hazardous waste sites which will need attention in the coming years. An effective public policy is urgently needed to deal with this situation.

The Senate Environment and Public Works Committee has before it President Carter's comprehensive Superfund proposal. In his State of the Union Message, the President reiterated his strong support for this legislation. This legislation is absolutely essential if we are to meet our responsibilities to protect the public from the threat of oil and hazardous substance spills and waste sites. It is important that legislation dealing with this national problem move forward by the May 15 deadline for legislation requiring appropriations.

Therefore, I urge the Committee to give this legislation expeditious consideration. I look forward to working with you in the coming weeks on this important public policy issue.

Sincerely,

STUART E. EIZENSTAT,
Assistant to the President
for Domestic Affairs and Policy.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., September 25, 1979.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washingon, D.C.

DEAR MR. CHAIRMAN: On September 25–26, 1979, the Subcommittee on Environmental Pollution and Resource Protection will mark-up S. 1480, the "Environmental Emergency Response Act". This bill is similar, although certainly not identical, in a number of important respects to the Administration's "Superfund" proposal, S. 1341. The Administration's proposal would provide a fund based upon fees from industry and general appropriations to cleanup and provide emergency government response at abandoned and inactive hazardous waste disposal sites as well as spills of oil and hazardous substances. In addition, the bill would provide for government notification of such incidents and compensation of victims, as well as establish the liability and financial responsibility of involved parties.

As the President stressed in his letter transmitting the Administration's bill, this legislation addresses several of the "most significant environmental and public health problems facing our Nation". The urgency and importance of this legislation requires that I respond before mark-up to some of the more significant issues raised by the Chemical Manufacturers Association (CMA) in testimony before your subcommittee on July 19, 1979. The testimony made a number of assertions and criticisms of the Superfund proposal which the Administration believes are incorrect.

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WHO SHOULD BE LIABLE

The CMA asserts that the Administration's proposal imposes penalties today for past disposal activities which were not considered incorrect or unlawful when they occurred. It also suggests that the proposal constitutes an ex post facto denial of due process and overturns existing liability concepts.

The legislation proposed would establish liability for costs expended by the government to clean up past disposal practices that *today* are threatening public health and the environment, and it does so without reference to prior standards. The supposition of the Administration's proposal is that society should not bear the costs of protecting the public from hazards produced in the past by a generator, transporter, consumer, or dumpsite owner or operator who has profited or otherwise benefited from commerce involving these substances and now wishes to be insulated from any continuing responsibilities for the present hazards to society that have been created. To relieve industry of responsibility for chemicals whose effects only become visible years later, is to sentence our children's society to a potentially enormous burden. Relieving industry of responsibility establishes a precedent seriously adverse to the public interest. It tells polluters and others who introduce hazardous substances into our society and environment for profit that the longer it takes for resultant problems to appear—regardless of their severity—the less responsible they are for solving the problem.

The CMA charge that Superfund constitutes an ex post facto denial of due process on the grounds that it somehow broadens liability beyond that which existed at the time wastes were placed in the site, is politically advocacy, not good law. It is well established that the constitutional prohibition against ex post facto laws, with very narrow exceptions, applies only to criminal laws. The relevant provisions of the proposed legislation are not criminal laws. Further, the evolving case law surrounding hazardous chemicals as well as waste disposal sites has recognized that it is the present condition of the disposal site which must be repaired, regardless of whether the seeds culminating in this condition were sown a number of years ago.

More importantly, the liability provisions of Superfund are not retroactive at all. They merely codify longstanding common law rules relating to liability for hazardous products and undertakings. Existing common law principles hold that in areas of ultra-hazardous activity, liability is attached to any injury resulting directly or indirectly from the activity. This is true regardless of whether the injury was foreseeable or whether negligence or contributory negilgence was involved. There is a great deal of precedent in case law which focuses on ultra-hazardous activity involving explosions, fires, and like hazards. As recent State and Federal court decisions are emphasizing, the reasoning of legal decisions in these cases are applicable to environmental incidents involving hazardous substances and wastes such as dioxin, benzene, PCB's phosgene gas, and carbon tetrachloride, as well. In such instances, the government must be able to act as an agent for the people in providing the protection the common law established. The proposed legislation carries these legal prinicples into statutory law. In this way, society can be more quickly and easily pro-

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tected from, and compensated for, damages resulting from exposure to such hazardous substances and wastes.

Finally, the Administration believes the issue goes beyond a mere legal question. The chemical manufacturer in Niagara Falls, New York who contributed most of the wastes at Love Canal, knew of the hazards as long as 20 years ago and still failed to act. A producer of agricultural chemicals has polluted drinking water supplies with DBCP, despite evidence that it is a carcinogen and causes sterility. Numerous chemical companies have been content to contract to have wastes known to be toxic hauled away and then wash their hands by disclaiming any knowledge of how they would ultimately be disposed. In some instances, such as Pittston, Pennsylvania, these past practices continue until those responsible are discovered. Very few, if any, corporations, either big or small, have voluntarily come forward to warn the public of present hazards they have created in the past and of which only they are knowledgeable, despite the fact that approximately 80 percent of hazardous wastes were disposed on-site. These are not, as is being claimed, the failings of inadequate past standards or practices, they are acts of omission today on the part of some elements of industry. As the common law has recognized, knowing failure to take action now to protect society from a hazard created previously, is in practical effect, the same as originally creating the hazard.

WHAT SHOULD BE COVERED

CMA has argued that combining spills of oil, spills of hazardous chemicals, and releases of chemicals from hazardous waste disposal sites are three completely different problems requiring different approaches and remedies.

In the Federal Water Pollution Control Act of 1972, specifically Section 311, Congress established that spills of oil and hazardous substances were not "completely different problems" but, instead, were so similar that they should be dealth with by coverage under the same provision of law. Congress reaffirmed this course of action with passage of the Clean Water Act of 1977. The "Superfund" proposal merely incorporates existing law, in this regard.

Moreover, it is often the case that a spill incident involves both oil and hazardous substances. Spilled PCB-laden oil, for instance, is an example of a commonly encountered situation. Train wrecks which spill oil and such hazardous substances as chlorine or sulfuric acid are also examples. The sites used by many illicit dumpers and the cargoes they dump are very frequently combinations of oil and chemicals. We are finding that many, and possibly most, abandoned and inactive hazardous waste disposal sites involve waste oil as well as chemicals.

From a programmatic point of view, government emergency response to spills and abandoned sites cannot be readily separated. The people who will be implementing any legislation in the field believe that their ability to act to protect public health will be enhanced by one comprehensive system because the need for immediate notification and response, emergency response actions, and engineering techniques required for containment and remedy, are the same for spills of hazardous substances and oil and for hazardous wastes and waste oils at

abandoned and inactive hazardous waste disposal sites. Also similar are many of the threats to public health and the environment as well as the choices faced by response personnel—evacuation, providing alternative drinking water supplies, and ultimate disposition of the spilled materials.

It has been EPA's experience that emergency response must often begin prior to determining whether the pollutants involved include hazardous substances as well as oil or whether the source is a classic disposal site. The present emergency at abandoned coal mines under Pittston, Pennsylvania illustrates the need for a comprehensive approach. Initially the problem was discovered as a 35 mile long oil slick floating on the Susquehanna River. At the request of the State, emergency Federal government efforts were initiated to deal with the presumed spill. The fumes of toxic chemicals combined with the floating oil alerted on-scene personnel to a more complex and dangerous situation, although the nature and source of the toxic chemicals was not known for the first several days while efforts to stop the spread of the oil and chemicals continued. Subsequently, it has been determined that the oil, chemicals, and explosive fumes were coming from illicit dumping of hazardous wastes into abandoned coal mines that drained to the river.

In the field, our people are often required to make emergency response decisions on weekends, in the middle of the night or before the source of the spill is known. In such circumstances, if they cannot respond because of separate laws, they must first determine what substances are involved, whether the source is a classic spill or a waste disposal site, and which legislation authorizes funding the response. The Administration's proposed legislation would protect the public no matter where the contamination occurred, no matter what substance was involved, and no matter how the incident was caused.

From the point of view of bureaucratic and regulatory reform, two or three different programs would be extremely inefficient. The administration of separate response mechanisms, fee collection mechanisms, fund management schemes, liability regimes and claims procedures would require more personnel resources than one comprehensive approach. Most importantly, in regard to an area about which industry, especially CMA, has complained, frequently, several separate programs would unquestionably increase duplication paperwork and the number of regulations.

ARE THERE GAPS IN EXISTING LAW?

CMA states that "there is no need for a Superfund for chemical spills . . . one which duplicates existing laws." The Administration's proposal does not duplicate existing laws with regard to chemical spills; it incorporates and expands upon them. This expansion is necessary because—and this applies to oil spills as well as chemical spills—Section 311 of the Clean Water Act, the existing law does not authorize government action for spills onto the ground only, or spills that result only in the release of gases into the air. It also does not adequately cover spills that contaminate only groundwater. While Section 504 of the Clean Water Act authorizes government response to such incidents as well as to spills of substances that have not been

designated under Section 311, neither Congress nor Democratic or Republican Administrations have funded this section. Furthermore, Section 504 authorizes only $10 million—an amount which is inadequate to clean-up even one abandoned hazardous waste disposal site of significant size. Secondly, existing law does not provide for any compensation of damaged third parties. The Administration proposal provides compensation for property damages and limited economic livelihood damages. Again, this is an expansion and not a duplication of existing law. To provide third party damage compensation for oil spills but not for chemical spills, a position implied in CMA's statement, would be quite unfair and not in the best interests of the public.

FEES VERSUS APPROPRIATION

CMA suggests that the Administration's proposal unfairly places the entire financial burden of Superfund on the chemical industry. Instead, CMA believes that funds should be provided by the general taxpayer. In addition, CMA claims that the proposal assumes that all products of the chemical industry are hazardous, and that the only hazardous products are those of the chemical industry.

The economic impact analysis done for Superfund indicates that virtually all the costs of the fee system can be passed through the chain of commerce to the ultimate consumer of the final products made from the chemicals subject to the fee without significant economic impact. The industry has not provided any analysis to refute the economic impact analysis. Recent articles in *Chemical and Engineering News* confirm this. In the March 5, 1979 issue, for example, Union Carbide Vice President Richard Hughes is cited as stating that despite huge price increases for petrochemical feedstocks, the supply-demand situation now makes it feasible for producers to recover their increased costs. Mr. Hughes' statement refers to price increases which are far greater than those that would result from the Superfund fee. In the July 2, 1979 issue, a leading Wall Street chemical industry analyst states that the chemical industry should be able to pass along feedstock price increases—again in excess of Superfund fees—by raising its product prices. In an industry with an historic annual average of six to eight percent profits and equally high rates of growth, fees of less than two percent will, at most, produce a slight reduction in the rate of growth. In summary, in no way does this amount to a shouldering of the entire financial burden of Superfund. Moreover, the CMA charges fail to point out that the Administration's Superfund would also necessitate, in addition to industry fees, significant funding from Federal and State taxpayers.

The Administration does not believe that funds for the cleanup of abandoned and inactive hazardous waste disposal sites should come exclusively from general Federal revenues as CMA advocates. Rather, as is embodied in its Superfund proposal, the Administration feels that needed funds should be raised from a combination of general appropriations and fees on the industries and consumers who, while benefiting economically have exposed society to these hazardous risks. In an era when a balanced Federal budget has become a paramount national objective, such an approach is the best and perhaps only means to assure the availability of the billions of dollars needed to deal with

the abandoned site problem. The public simply will not stand for being misled by the Administration and Congress into thinking that sufficient general funds will be made available, only to have its raised expectations dashed by equally legitimate balanced-budget considerations.

Finally, in terms of equity, the Administration believes that it is less fair for the general taxpayer to bear this financial responsibility than it is for consumers who benefit from the commerce of hazardous substances to do so. Too often the general taxpayer is asked to pick up the tab for problems he or she did not create. Using special fees to differentiate between the general public and those who benefit from specific commercial and industrial practices is widely accepted, not only in our society but throughout the world, and should be used in this case.

WHO SHOULD PAY

With regard to CMA's assertion that the Administration's proposal assumes that the only hazardous products are those of the chemical industry, this is incorrect. A portion of the hazardous substances and wastes which despoil our environment and affect public health come from industries other than the chemical industry. However, at an earlier step in the industrial and commercial chain of production, all of these hazardous substances and wastes are generated from either petrochemical feedstocks or inorganic raw materials. It was this reasoning, in fact, which led the Administration to recommend the feedstock/raw material fee system. By collecting a fee at this early point in the production process, the Administration believes that the costs are equally passed on to all industrial sectors generating hazardous substances and wastes, while at the same time requiring only 700–900 fee collection points, and, thus, ensuring a minimal fee collection bureaucracy, and a fee system which because of its simplicity, can be quickly implemented.

In contrast, the generator-based fee which CMA has privately advocated, would require that the fee be collected from hundreds of thousands of generators of hazardous wastes, and substances (many of them small companies). A generator-based fee would require two separate fee systems—one for generators of hazardous substances and another for generators of hazardous wastes; sometimes they are the same, but often they are entirely different companies. The dual fee system and hundreds of thousands of companies from which a generator-based fee on hundreds of chemicals would have to be collected, will significantly increase government paper work imposed on industry, be extremely difficult to defend in court, and we believe, effectively render administration of the fee system inoperative. The economic impacts of a generator-based fee, unlike the feedstock/raw material fee system, also has significant environmental and economic impacts. A generator fee is a direct incentive for illicit dumping and avoiding coverage under the manifest and permit programs established under the Resource Conservation and Recovery Act. For example, for land disposal the primary means of dealing with these wastes today the average generator will have to pay at least a one-third increase in the costs of disposal. Electroplaters leather finishing, secondary copper/lead/aluminum smelting, wood fabric dyeing and finishing, steel

industry, primary lead smelting, and woven fabrics are among the dozen industries that would be especially impacted. For example, costs of disposal to the steel industry would jump from $2 per ton to $11 per ton, and woven fabrics from $3 per ton to $12 per ton.

It is also incorrect to assert as CMA does that the Adminisration's proposal assumes all chemicals are hazardous. The feedstock/raw material fee system does assume, however, that many chemicals are hazardous. For this reason the fee is aimed at a specific set of hazardous inorganic chemicals—those which are themselves hazardous, are frequently spilled or found in hazardous waste disposal sites, or form the basic building blocks of the thousands of chemicals found in these sites. As for the fee on petrochemical feedstocks, many organic chemicals and their by-products in the halogenated hydrocarbon, pesticide, and aromatic categories are known to be extremely hazardous. Experience to date tells us that chemical relatives of known problem chemical and their by-products are likely to pose problems. The number and volume of organic chemicals which are not hazardous or likely to be hazardous is relatively small. Also, the complexity of the organic chemical industry would make it extremely difficult to pick and choose among organic chemicals in determining which feedstocks or organic chemicals to impose a fee on.

Since the feedstock fee applies to all organics, costs will be passed on equally to consumers and will result in no dislocations, process changes or plant closings. Thus, whatever slight inequity might exist in theory, it will have virtually no practical effect. If it chose, Congress could further assure against any potential inequities by establishing an exemption from the fee for generators who could show that they neither used a hazardous substance in production, produced a hazardous substance, or generated a hazardous waste. The principle of collecting a fee from all those who initiate commerce in or generate a potentially hazardous material (oil and other chemicals) was embodied in the "Superfund" bills considered by both the House and Senate in the last Congress. It is in no way a penalty but, rather, a recognition that those segments of industry and consumers who most directly benefit from this commerce should share the primary responsibility for necessary public health and environmental protection which results from this commerce. The fee system incorporated in the Strip Mining Reclamation Act adopted this principle and uses it to pay for the reclamation of inactive and abandoned mines.

In summary I hope you will give careful scrutiny to the various views on this legislative issue before you. We have made significant progress in dealing with chemical incidents, but more needs to be done. We must have comprehensive coverage to fill in the many gaps not covered by our current spill control and hazardous waste disposal programs. But authority to protect the environment and public health and compensate damages needs a fee system capable of financing these actions. Without both, the legislation can accomplish little. This Committee has been a pioneer in enacting environmental legislation and the proposals before you represent the next step in finally dealing with one of the most serious environmental and health hazards in our society today.

Sincerely yours,

DOUGLAS M. COSTLE.

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THE WHITE HOUSE,
Washington, D.C., June 13, 1979.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Today I am transmitting legislation to address some of the most significant environmental and public health problems facing our Nation. The problems which the legislation is designed to address are extremely serious. Recent months have focused public attention on a series of past improper hazardous waste disposal incidents such as the tragedy of Love Canal, New York. This case clearly demonstrates the unacceptable costs of improper hazardous waste disposal which may accrue from other incidents such as: contamination of surface and ground waters including drinking water supplies; staggering financial costs of cleaning up and containing wastes; and acute poisoning, carcinogenicity, mutagenicity, and promotion of miscarriages and birth defects.

The proposed legislation is a comprehensive program with the financial responsibility shared by Federal, State and local governments as well as industry. For spills of oil or hazardous substances, the legislation establishes a comprehensive and uniform system of notification, emergency response, enforcement, liability and limited economic compensation for such incidents. For uncontrolled sites, the proposed legislation would establish essentially the same program but without economic compensation. This comprehensive program would be implemented by: requiring notification of spills and the presence of uncontrolled hazardous waste disposal sites; empowering the Federal Government to clean up and mitigate pollution in those incidents where the liable parties do not respond adequately or cannot be quickly identified; enforcing higher standards of care in the handling of oil, hazardous substances and hazardous wastes including recovery from liable parties of governmental response costs and economic compensation; and providing compensation for the economic damages sustained by innocent victims of spills.

The States have a significant role in implementing this legislation. Although the proposed legislation authorizes Federal action in emergency situations, the States are expected to provide financing for both the short-term and long-term containment of releases from hazardous dumpsites.

The legislation provides a major innovation in the manner we approach environmental rehabilitation. In particular, those elements of the private sector which produce hazardous chemicals will share, along with the Federal and State governments, in the financial responsibility for meeting the goals of the legislation through a system of fees.

The legislation provides for a mid-term evaluation. Within three years of enactment a report will be submitted to the Congress which would include experience to date in implementing the legislation; the extent, if any, of the critical uncontrolled sites problem; projected funds required for spill response; extent of State participation; and recommendations for statutory modification in such areas as fee structure, fund operation, liability limits, and financial responsibility limits.

It has become abundantly clear over the past several months that exposure of humans and the environment to dangers from spills of oil, hazardous substances and hazardous wastes and from releases at uncontrolled hazardous waste disposal sites are two of the most pressing environmental problems facing the Nation. I believe that the proposed legislation represents a comprehensive and effective approach for protecting people and the environment from such incidents. I am hopeful that this proposal will receive prompt consideration and speedy enactment. The health of the public and the environment cannot afford less.

Sincerely,

JIMMY CARTER.

Hearings

The Committee held 11 days of hearings on S. 1480. The Administration provided witnesses from the Environmental Protection Agency on March 28, 1979, and again on June 20. The U.S. Department of Justice also presented testimony at a joint subcommittee markup on April 15, 1979.

On March 28 the Committee also received testimony from chemical contamination victims from Niagara Falls, New York and Jamesburg, New Jersey; from State environmental and health officials; and from a representative of the seafood processing industry.

On March 29 the Committee received testimony from industrial representatives; from a chemical engineer; and from Senator Jacob Javits and Representative John LaFalce of New York.

On May 18, Senator Daniel Patrick Moynihan of New York chaired a field hearing in Niagara Falls, New York, and received testimony from local government officials, local chemical industry representatives, Love Canal residents, medical experts and local citizens.

On June 21, the Committee received testimony from State officials from New York, Kentucky, New Jersey, and Michigan; and from Senator Bill Bradley of New Jersey.

On June 22 Senator John Culver of Iowa, chaired a field hearing in Charles City, Iowa, and received testimony from State and local officials, a representative of the EPA's Region VII office; health and environmental witnesses; and a producer of chemical products.

On June 29, Senator John Chafee of Rhode Island chaired a field hearing in San Francisco, and received testimony from West Coast State officials; from local educators, from witnesses of environmental groups; and from representatives of the oil and insurance industries.

On July 19 and 20, the Committee received testimony from industrial, environmental and public health witnesses; from a representative of the National Solid Waste Management Association, as well as from public officials from New Jersey and New York.

On September 6 and 7, the Committee received testimony from additional industrial, environmental, legal and health witnesses.

The Subcommittees on Environmental Pollution and Resource Protection held 12 days of markups on S. 1480. The Full Committee held 5 days of markup on the reported legislation.

Rollcall Votes

Pursuant to section 133 of the Legislative Reorganization Act of 1970, and the Rules of the Committee on the Environment and Public Works, rollcall votes shall be included in this report if not announced at the time such vote was taken.

There were three rollcall votes of the Committee during deliberations of S. 1480.

S. 1480 was ordered reported by a vote of 11–1. Senators Bentsen, Burdick, Chafee, Culver, Domenici, Gravel, Hart, Mitchell, Moynihan, Randolph, and Stafford voted in the affirmative with Senator Simpson voting in the negative.

Evaluation of Regulatory Impacts

In compliance with section 11(b)(1) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

S. 1480 is not a bill to regulate environmental releases. It creates no new regulatory standards or limits on releases, and it does not require any party to obtain a license, permit, or other authorization, or to fill out any application forms. The bill does not significantly add to the regulatory authority under existing laws, or create a significant impact upon the privacy of individuals.

There is a statutory requirement for notification of the government of any release of a hazardous substance other than a federally permitted release, and of the location of any disposal sites. Otherwise, those regulations which are required generally deal with the administration of governmental programs or the consideration of claims, and not the regulation of individual action.

Cost of Legislation

Section 403 of the Congressional Budget Act of 1974 requires the preparation of a cost estimate by the Congressional Budget Office for legislation reported from Committee.

A complete analysis of the cost of the bill was not available at the time of the printing of this report. Such analysis will be available before the bill is considered by the Senate.

SUPPLEMENTAL VIEWS OF SENATOR STAFFORD

This bill represents not merely an attempt to grapple with the broad health and environmental concerns raised by chemical poisons, but also an attempt to responsibly address the unique problems raised in proof of chemically-caused disease. Numerous commentators have recognized the problems which arise in the context of proving causation when the injury is a disease. Some of these are quoted in the body of this Report. Two others are worthy of quotation in these views, because they are among the commentators who have suggested an approach similar to that taken by the Committee.

> It is not difficult to conclude that the question of causation has been wrongly decided in many of the cases in the cancer field; if the model is a valid representation of scientific cancer causation, then judges frequently deviate from the proper standards of causation. Part of the problem is the nature of an adversary determination of facts: plaintiff presents his expert witnesses, defendant his, and the fact-finder decides whom to believe.
>
> One problem (of causation in the toxic substances cases) could be alleviated if judges would accept as probative testimony that a substance "could have caused" a cancer, and realize that in scientific terminology, such testimony is more than just speculative. Counsel could also raise the level of the causational discussion by introducing studies and scientific papers as evidence, rather than merely relying on "expert" testimony.
>
> Perhaps some problems could be alleviated if state courts adhered to a rule that exposure of a plaintiff to a carcinogen for a period of time reasonable for carcinogenesis shifted the burden of proof of causation to defendant.

"Judicial Attitudes Toward Legal and Scientific Proof of Cancer Causation," 3 *Columbia Journal of Environmental Law 344* (1977).

* * * * * * *

> (T)he flaw with an individualized approach in the disease setting is that the actual cause of individual manifestations of a disease is usually impossible to determine. Perceptions of work-disease relationships normally rest upon statistics, which are of little use in judging the condition of a specific worker, and courts traditionally shun the use of statistical data since such evidence cannot prove that employment conditions produced an individual's illness. Indeed, even though evidence may show that a high percentage of the incidence of a disease results from the work environment, each individual could lose his case for lack of specific proof of causation. To avoid this outcome, rebuttable presumptions created leg-

islatively or administratively could be employed. Thus, where strong support for a work-disease connection existed, the disease could be presumed to be occupational in the absence of an individual showing that factors other than the workplace produced an illness.

The use of presumptions, which allows application of the best available evidence of work-disease linkages, would simplify the problems of proof that victims of occupational disease would face under new compensation schemes.

"Compensating Victims of Occupational Disease," 93 *Harvard Law Review* 916 (1980).

The medical causation provisions contained in the reported bill were debated at greater length and with greater emotion than any others in S. 1480. They underwent four successive public re-formulations and untold non-public ones. With each improvement, the confidence of the Committee in the provisions increased. What the reported bill contains are solid, workable and responsible changes that will permit innocent victims to recover when they ought to.

The Committee did not go as far as some had urged or as far as perhaps it should have. Persuasive arguments can be made for shifting the actual burden of proof to a defendant once a plaintiff demonstrates certain facts. The scientific and medical studies demonstrating what injuries a particular chemical causes (or does not cause) are in the file cabinets of those who produce or handle them, not the public at large.[1] Indeed, the industries guard these studies against public disclosure with a vigilance rarely seen elsewhere. In addition, the patterns of distribution—and hence exposure—are best known to defendants, as are a hundred other facts critical to each case.

Despite these arguments, the Committee concluded that this was an effort best begun with a small step rather than a large one. Hopefully, however, the State legislatures and courts which have already chosen to go further than this bill in their own particular states will continue accumulating the experience with which the Congress can judge the wisdom of going beyond the modest changes in this bill.

EVOLUTION OF S. 1480'S LANGUAGE

When S. 1480 was introduced, it contained the original attempt to deal with the difficult problem of proving causation. That original language provided as follows:

(*c*) *Notwithstanding the ordinary requirements for proof of cause in fact or proximate cause of damage, injury, or loss a person liable*

[1] Kepone, for example, was synthesized by the Allied Chemical Corporation in 1951 and patented in 1952. Allied contracted for the first studies on the chemical's effects in 1958. Beginning in 1961, studies with laboratory animals indicated that Kepone adversely affected nervous and reproductive systems. An unpublished corporate document dated July 1, 1961, indicated that Kepone induced hepatocellular carcinomas. Kepone became a publicly recognized name in 1975 and afterwards, following disclosure of the massive contamination of the James River. But the studies performed on Kepone were not used to register the substance as a pesticide and, therefore, had been kept confidential before then.

Similarly, dibromochloropropane (DBCP), a chemical widely used to control nematodes came into use in 1955. It was banned by the Environmental Protection Agency in 1979, three years after it was found to have caused sterility in workers.

In the late 1950's two California research scientists, working independently of each other, reported that DBCP caused a significant decrease in sperm count and other testicular effects in laboratory animals. Some of this private research was supported by Shell Chemical and Dow Chemical, the two principal manufacturers of DBCP. The studies indicating that DBCP could have adverse health affects were not made public until 1961.

under this section for any discharge, release, or disposal of any hazardous substance shall be liable for all medical expenses under subsection (a) (2) (F) of this section if a reasonable person could conclude that such medical expenses and the injury or disease which caused them are reasonable related to such discharge, release, or disposal, including, but not limited to, the consideration of statistical correlation and the increase of incidence of such injury or disease in the exposed population above that which is otherwise statistically probable. The inability of a claimant to demonstrate (1) the particular identity of the substance which caused the injury or disease, (2) the particular source of such substance, (3) the pathway of such substance enroute to the injured party, or (4) an explanation of the etiology of the substance in the injured party shall not bar recovery.

As the hearings on S.1480 progressed, it became apparent that the original medical causation language required clarification and refinement. Therefore, a second version of the provisions was developed and included in "Staff Working Paper Number 1". The second version of the language provided for the following:

"*(c) (1) (A) In any proceeding involving a claim for medical expenses alleged to have resulted from a discharge, release, or disposal of hazardous substance, the trier of fact shall consider as relevant and material (i) information as to an increase of incidence of such injury or disease in the exposed population above that which is otherwise probable, (ii) epidemiological studies (without regard to the size of the sample), (iii) animal studies, (iv) tissue culture studies, (v) microorganism culture studies, and (vi) other laboratory or toxicologic studies tending to establish the likelihood that a release of such substance caused or contributed to any injury or disease of the type of class complained of.*

(B) Uncertainty of medical or scientific evidence with regard to establishing—

(i) the specific substance which caused the injury or disease;

(ii) the particular source of such substance,

(iii) the pathway of such substance en route to the injured party, or

(iv) the etiology of the substance in the injured party, shall bear only on the weight of said evidence, as determined by the trier of fact.

(2) (A) Notwithstanding the ordinary requirements for proof of cause in fact or proximate cause of damage, injury, or loss, a discharge, release, or disposal shall be presumed to have caused the injury or disease complained of and the associated medical expenses if a plaintiff seeking damages under this subsection offers evidence tending to establish a reasonable likelihood that (i) the injured or diseased party was exposed to a hazardous substance found in a discharge, release, or disposal for which the defendant may be held liable under this section, and (ii) such a hazardous substance or such a discharge, release or disposal could have caused the injury or disease of the class or type for which medical expenses are sought.

(B) The person or persons liable for such discharge, release or disposal shall be responsible for all medical expenses under (a) (2) (F) of

this section unless such person establishes that there is no reasonable likelihood that the injury or disease for which medical expenses are sought resulted from said discharge, release, or disposal."

During formal markups by the Subcommittees on Environmental Pollution and Resource Protection, it became apparent that even this perfected language required yet another revision. With the help of practicing lawyers, health officials, and professors of law, a third version was drafted and accepted. It became a part of the bill taken before the full Committee. This language, and the legislative history which was proposed to accompany it, read as follows:

"(*c*) (*1*) *Liability for Medical Expenses.—A person liable for the discharge, release, or disposal of any hazardous substance under this section shall be liable for medical expenses as defined in subsection* (*a*) (*2*) (*F*) *of this section where such expenses were incurred in the treatment of injury or disease which such discharge, release, or disposal caused or to which it significantly contributed.*

"(*2*) (*A*) *Relevancy Exclusion.—In connection with any claim for medical expense under paragraph* (*1*) *of this subsection, the court may admit as relevant to the issue of causation evidence tending to establish a likelihood that the hazardous substance in question causes or contributes to injury or disease of the sort claimed to have been suffered by the claimant, including, but without limitation, evidence indicating* (*i*) *an increase of incidence of such injury or disease in the exposed population above that which is otherwise probable,* (*ii*) *results of pertinent epidemiological studies* (*without regard to the size of the sample*), (*iii*) *results of animal studies,* (*iv*) *results of pertinent tissue culture studies,* (*v*) *results of pertinent microorganism culture studies, and* (*vi*) *results of pertinent laboratory or toxicologic studies.*

"(*B*) *Prejudice, Confusion, and Waste of Time Exclusions.—Inconclusiveness of the medical or scientific evidence described in subparagraph* (*A*) *as to—*

"(*i*) *the specific substance which caused the injury or disease,*

"(*ii*) *the particular source of the substance,*

"(*iii*) *the pathway by which the substance reached the claimant,*

or

"(*iv*) *the etiology of the substance in the claimant shall affect the weight of such evidence as determined by the trier of fact, and not the admissability of such evidence in the case of an objection on the grounds that it creates prejudice, confusion, or waste of court time.*

"(*3*) (*A*) *Presumption of Cause.—In connection with any claim for medical expenses brought pursuant to subparagraph* (*1*) *of this subsection, where the claimant introduces evidence sufficient to enable the trier of fact to find* (*i*) *that the claimant was exposed to a hazardous substance found in a discharge, release, or disposal which the defendant caused or to which he contributed, and* (*ii*) *that there exists a reasonable likelihood that exposure to such substance causes or significantly contributes to injury or disease of the class or type which the claimant claims to have suffered, then it shall be presumed that the defendant caused or significantly contributed to that injury or disease.*

"(*B*) *The presumption defined in subparagraph* (*A*) *of this subsection affects the burden of persuasion, and shifts to the defendant*

the burden of persuading the trier of fact by a preponderance of the evidence that claimant's exposure to the substance in question did not cause or significantly contribute to the injury or disease which the claimant claims to have suffered."

The legislative history which was proposed to accompany the above draft read as follows:

MEDICAL CAUSATION

PROPOSED LEGISLATIVE HISTORY

For the limited purpose of recovering out-of-pocket medical expenses and rehabilitation costs, an injured party may utilize the methods of proof and evidence contained in subsection (c). To recover for other injuries (or for costs other than out-of-pocket medical and rehabilitation), an injured party must utilize the methods of proof and evidence ordinarily applied by the courts in his or her jurisdiction.

Paragraph (1) states what the claimant must prove in order to recover: that there was a release of a hazardous substance; that the defendant was liable for the release; that the release caused or contributed to the claimant's injury; and that his or her medical expenses were incurred in the treatment of the injury or disease. The claimant may meet part of this burden of proof by utilizing the presumption created in (c)(3)(A). To invoke this presumption, the claimant must introduce enough evidence to permit a trier of fact to conclude, first, that the claimant had been exposed for a sufficient period of time to a hazardous substance in the release for which the defendant is liable under this Act; and, secondly, that there is a "reasonable likelihood" that the sort causes or contributes to a disease or injury of the sort complained of. A plaintiff who meets this burden will benefit from a presumption that the defendant caused or significantly contributed to his or her disease or injury.

If the plaintiff fails to introduce enough evidence to permit a trier of fact to arrive at these conclusions, then the presumption will not be created. If the claimant does meet this burden, however, it then falls to the defendant to introduce counter-proof. Such counter-proof could be so persuasive that a defendant were entitled to a directed verdict in his favor. Failing that, however, the question of cause is submitted to the jury (or other trier of fact) for determination.

Subparagraph (c)(2)(A) permits the use of certain types of medical or scientific evidence in proof of the causal relationship. This is included because some courts have held that, as a matter of law, animal studies, tissue studies and the other types of evidence described in the subparagraph are not probative on the issue of disease causation in humans. Of course, a court must always make the initial determination of whether a specific item of evidence is sufficiently probative to be admitted. Subparagraph (a) does not lessen the obligation of the court to do this. It is difficult in any event for the Congress

to control how court will consider evidence. The subparagraph does, however, represent the Congressional conclusion that animal studies, tissue studies, microorganism culture studies and the like may, as a class, be relevant.

Subparagraph (c) (2) (B) addresses a different but related problem. In some cases, evidence of the sort described in subparagraph (A) may be sufficiently probative to be admissible, but nevertheless be excluded on other grounds. These groups of exclusion are usually described as prejudice, confusion and waste of time. These grounds of exclusion are created by uncertainties in the evidence as to specific points of proof. Paragraph (B) enjoins a court to admit the evidence despite these uncertainties and permit the jury to take them into account in determining the evidence's credibility. Again, as in subparagraph (A), it is not intended that evidence be admitted which is not probative. An item of evidence which is so uncertain as to be of no probative worth would not be relevant and, hence, be excluded. This question of whether an item of evidence is sufficiently probative to be admitted is to be determined by the court, just as it is under current law. Once determined to be probative, however, an item should not be excluded merely because some uncertainty in some particulars demands extra effort on the part of the trier of fact to overcome prejudice, sort through confusion, or just spend more time. The expenditure of such additional time and effort is warranted because in many cases this evidence may be all that is available.

FINAL COMMITTEE ACTION

At the full Committee level, considerable attention was focused on this provision. After extended discussions between individual members, perfecting amendments were offered by Senators Burdick, Mitchell, and Domenici. These were adopted on June 5, 1980. These amendments are shown in the following form: Language to be omitted is enclosed in brackets; new language is shown in roman.

(c) (1) LIABILITY FOR MEDICAL EXPENSES.—A person liable for the discharge, release, or disposal of any hazardous substance under this section shall be liable for medical expenses as defined in subsection (a) (2) (F) of this section where such expenses were incurred in the treatment of injury or disease which such discharge, release or disposal caused or to which it significantly contributed.

(2)[(A)] RELEVANCY EXCLUSIONS.—In connection with any claim for medical expense under paragraph (1) of this subsection, the court may admit as relevant to the issue of causation evidence tending to establish a likelihood that the hazardous substance in question causes or contributes to injury or disease of the sort claimed to have been suffered by the claimant, including, but without limitation, evidence indicating (i) an increase of incidence of such injury or disease in the exposed population above that which is otherwise

probable, (ii) results of pertinent epidemiological studies (without regard to the size of the sample), (iii) results of pertinent animal studies, (iv) results of pertinent tissue culture studies, (v) results of pertinent micro-organism culture studies, and (vi) results of laboratory or toxicologic studies.

[(B) PREJUDICE, CONFUSION AND WASTE OF TIME EXCLUSIONS.—Inconclusiveness of the medical or scientific evidence described in subparagraph (A) as to—

[(i) the specific substance which caused the injury or disease,

[(ii) the particular source of the substance,

[(iii) the pathway by which the substance reached the claimant, or

[(iv) the etiology of the substance in the claimant shall affect the weight of such evidence as determined by the trier of fact, and not the admissability of such evidence in the case of an objection on the grounds that it creates prejudice, confusion, or waste of court time.]

(3)(A) PRESUMPTION OF CAUSE.—In connection with any claim for medical expenses brought pursuant to subparagraph (1) of this subsection, where the claimant introduces evidence sufficient to enable the trier of fact to find (i) that the claimant was exposed to a hazardous substance found in a discharge, release, or disposal which the defendant caused or to which he contributed, and (ii) such exposure was in a quantity or for a duration with respect to which there is a reasonable likelihood that it is sufficient to cause or significantly contribute to injury or disease or the class or type of which the claimant complains, and (iii) *that there exists a reasonable likelihood that exposure to such substance causes or significantly contributes to injury or disease of the class or type which claimant claims to have suffered, then it shall be presumed that defendant caused or significantly contributed to that injury or disease.*

[The presumption defined in subparagraph (A) of this subsection affects the burden of persuasion, and shifts to the defendant the burden of persuading the trier of fact by a preponderance of the evidence that claimant's exposure to the substance in question did not cause or significantly contribute to the injury or disease which the claimant claims to have suffered.]

(B) The presumption defined in subparagraph (A) of this paragraph affects only the burden of going forward with the presentation of the case. Nothing in this paragraph shall affect the burden of proof which shall remain with the claimant in accordance with rule 301 of the Federal Rules of Evidence.

Adopting these amendments was intended to achieve the following:

First, by striking the words "a likelihood" in subparagraph 2(A) the language in the reported bill eliminates any inference that irrelevant evidence was admissable.

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Second, by striking subparagraph 2(B), the action eliminates any unintended damage to rule 403 of the Federal Rules of Evidence. In cases involving toxic or hazardous substances, courts should admit evidence which might be excluded in other types of cases on the grounds of prejudice, confusion or waste of time. Often the practical consequence of excluding such relevant evidence on these grounds is to deny the plaintiff any opportunity to prove his case. The policy in favor of admitting these types of evidence is expresssed in legislative history rather than statutory language because of concerns that the latter course might create difficulties in parts of the judicial system unrelated to the purposes of this legislation.

Third, by elaborating on "exposure", the language now more clearly defines what burden the plaintiff must meet before the presumption is created.

Fourth, by amending the nature of the presumption, the amendment eliminated the burden of disproof which earlier versions would have placed on the defendant. The plaintiff is still to enjoy the benefit of a presumption running in his favor, but the presumption is not related to the burden of persuasion.

ROBERT T. STAFFORD.

MINORITY VIEWS OF SENATOR ALAN K. SIMPSON

All of the Members of this Committee have devoted a great deal of time and sincere effort in reviewing this measure now before us—a measure which has undergone a curious metamorphosis from a "staff working draft" to a committee bill within a few short days.

The interactions and negotiations between the Committee Members are always most stimulating. I particularly commend the cooperative efforts of Senator Culver and the courtesy and cooperation that he has extended to me. As always, our most fair and able Chairman, Jennings Randolph, has been the one to spread the "oil on troubled waters" whenever the discussions became more spirited than necessary! Also the able Ranking Minority Member, Senator Stafford, deserves praise in exercising that fine ability of his to reconcile and then to readdress the issues.

I also note the participation of the newest Member of our Committee, Senator George Mitchell. He is a fine addition and brings to this Committee a remarkable grasp of the law and a judicial temperament that will serve as well. I am greatly looking forward to my future deliberations with him in this arena.

The exceedingly active participation by Members of the Full Committee during the last few days of our markup process has done much to correct some of the serious shortcomings of the staff draft as well as to limit several other areas where matters were proposed which were proposed which could certainly be best described as "overreaching."

I have tried to be constructive in the proposing of amendments and appreciative of the Committee's attention in listening to my explanation of those amendments. It does alarm me to see the tendency, with but a sweep of the drafters' pen, to simply brush off on the floor many of the rules of evidence which have been so closely crafted and observed in our procedural life as lawyers. I will share with you that those rules of evidence are indeed frustrating. I know. I would be in the midst of a jury trial and suddenly with a ruling from the judge, would be unable to present a significant part of my case. That is a learning experience. I think it is critically important for the capable lawyer and non-lawyer members on the staff to remember well in your future years in Washington, that you must always consider the full impact of your efforts upon the trial bar, the judiciary and the citizens. The rules are there for a purpose. They have come "through the fires" and been tempered by litigation. They do work. Basic reason and common sense should be the impetus behind their revision—not simply frustration.

I have stated publicly on many occasions that I was fully prepared to work for the passage of an abandoned dump site act to deal with the issue of "orphan dumps." I would support any measure that would provide the direction and mechanism for the cleaning up those

hazardous waste sites in this country. These are the potential killers in every sense of the word. I would hope that we might still consider adoption of a system to inventory the inactive hazardous waste sites and then allow the states to select the priorities for those areas that require immediate clean up and correction. The Senate should also examine partial state financing of that effort.

My fundamental objections to this legislation—apart from the fact that it really does very little to focus on abandoned waste sites or even provide for a national inventory of the most hazardous sites in this country—is that it fails to meet the test of reasonable legislation in four principal areas.

I am disturbed about the creation of what I refer to as the "Federal Toxic Tort." The system of liability which is proposed by the bill is unique—and bizarre—for it establishes a limited federal cause of action for those who are injured by releases of hazardous substances.

Under this bill, the ability of injured third parties to find redress through the federal courts is incomplete and unsatisfactory. The forum for filing an action by injured parties is split between the state courts and the federal courts. Under this legislation, it is possible to bring an action in federal court for claims of general damages or medical costs. However, that portion of the cause of action that would allow compensation for an individual's special damages, mental distress, and similar damages must be tried in state courts or in federal courts applying state law. This is a serious failing and I believe it will prove to be a substantial impediment for those who wish to seek effective private legal representation.

I have little doubt but that this "split cause of action" will prove to be a most attractive system of procedure for those who feel that the weight of the Justice Department should be brought heavily to bear against potentially liable parties due to the federal subrogation aspects of private claims for which compensation has already been awarded from the "superfund." I am not ready to take that step and I believe that we have done serious injury to traditional notions of relying upon individuals to seek their own private legal representation as the means for seeking recovery under state common law.

The problems which the splitting of the injured party's cause of action would present in such areas of civil procedure as res judicata, collateral estoppel, conflict of laws, and bar and merger have been wholly overlooked in the committee's efforts to fashion this new federal remedy.

I also feel that making this federal alternative available as a partial remedy will seriously retard the development of the common law in the area of injury from hazardous wastes.

Secondly, there has been very little demonstration made in the record as to the financial ability of the victim compensation fund to address the claims which will be honored. The direction of Committee amendments recently offered in this area has been to expand the scope of compensation that may be awarded and to include such items as medical injuries, loss of income, damage to personal and real property, the rehabilitation of natural resources—and the shopping list is certain to grow with succeeding sessions of Congress.

As a recent Member of the Senate, I contend that one must only look at the history of our nation's social security system to realize that whenever Congress creates any form of compensation fund, the urge to add additional items of coverage for payment seems to be irresistible. The financial integrity of the fund has not been demonstrated under any evidence I have heard and the move to add additional grounds for awarding compensation will surely destroy its substance and drain it away.

Thirdly, the fee system is seriously deficient and inequitable. I feel that the proponents of the legislation are wholly unconcerned about the financial integrity of the fund when they propose to lay on a fee—or actually a tax—upon the chemical feedstock and oil industries of this country as a mean of generating revenue for the fund. Certainly, the tax is really a liability system in itself. "Adjustments" are intended to be made in the fee levy on feed stocks based upon the history of payment from the fund, with no restraint on the ability to transfer the financial burden for victim compensation to the private sector. That procedure does not provide the proper incentive for sound administration that such a program must have if it is to work efficiently and fairly.

I remain most concerned that the fee system will be imposed upon feed stocks without regard to whether those materials are ultimatly used in the process or manufacture of hazardous substances.

This is a grave mistake and an inequity. A fee on waste generation or disposal would certainly be a sounder stroke of public policy.

Also, I do not read the fee structure as creating or providing any positive incentive for high temperature incineration of wastes or other proven recycling efforts. These types of disposal efforts would help assure that hazardous substances do not become toxic wastes in the first instance.

And finally—and most significantly—I find that this bill is a damning admission that the last decade of sweeping environmental legislation which has been processed by this Committee and the Congress has failed to provide the level and degree of environmental quality and safety to public health that was intended to be secured—or that the American people believed had been adopted. Those early legislative efforts were adopted measure by masure and piece by piece—and came to form a solid wall of burdensome federal regulation that preempted state and local prerogatives and controls on nearly every issue.

The proponents of this legislation now seem intent to preempt the common law of the states, as well as the statutory enactments, and have come down to the "final solution" which is apparently to simply rely on what jurists of the 18th Century referred to as "the brooding omnipresence of the law" as being the strongest environmental control measure. This is not a good way to legislate. American businessmen and citizens deserve better.

ALAN K. SIMPSON.

ADDITIONAL VIEWS OF SENATORS DOMENICI, BENTSEN, AND BAKER

We did not oppose reporting out S. 1480 because we need a mechanism to clean up the old hazardous waste sites that are causing harm to the environment and to individuals. However, we do take issue with the approach that S. 1480 takes in substantially changing existing common law (in some cases retroactively) and establishing a liability scheme predicated on such a broad definition of what constitutes a hazardous substance.

The Committee on Environment and Public Works was faced with the option of either developing a narrow response-oriented bill or establishing a broadly-structured liability scheme to address this very complicated issue. S. 1480, as reported, chose the latter approach and makes manufacturers, transporters, and disposers of hazardous substances strictly, jointly, and severally liable for releases and spills. While the Committee accepted over twenty-five modifying amendments during the mark-up, many concerns about S. 1480 remain unresolved.

The bill creates new judicial standards for presentation of evidence and pursuing a cause of action, the combined effects of which are unknown and untested. S. 1480 changes State tort law by developing a new Federal tort law which allows individual claimants to enter court more easily and to proceed with a suit despite a paucity of evidence. This is a creation of a Federal cause of action which constitutes an intrusion into judicial processes that have been formulated over hundreds of years of common law evolution and procedural development upon which industries and businesses have relied in assessing their exposure to liability and the availability of insurance when they engage in certain industrial activities. Specifically, the bill significantly reduces the need for a plaintiff to establish a casual link between a hazardous substances and an alleged injury.

The difficulty in pinpointing the cause of a disease on exposure to a single chemical is well-documented. For example, in the case of cancer, a multitude of factors could play a role in the contraction of the disease. Those factors include genetics, personal habits (such as smoking and diet), occupational exposures and environmental exposures. On Monday, June 30, 1980, the Washington Post ran an editorial entitled "The Chemical Questions" which raises the difficult questions of chemical exposure and the inexact science of tracing actual exposure to an actual disease. The editorial discusses the case of Love Canal and the fact that despite numerous studies, we are no further along in linking the exposure to the chemicals in the canal with the actual illnesses being experienced by the residents of Love Canal.

On June 13, 1980, Science magazine ran an article on a widely-publicized study that was done on chromosome damage among the

residents of Love Canal. The Science article points out the serious deficiencies of that study and dismisses the findings contained in the study as unsubstantiated.

This discussion is not intended to pass judgment on the illnesses at Love Canal, but rather to bring into perspective the difficulties we face in attempting to sort through the synergistic effects of a number of factors in everyday life in isolating the source of many illnesses which are occurring more and more frequently.

The bill also creates a new cause of action with strict liability. Strict liability, in conjunction with a Federal cause of action, is a dramatic step in a field greatly deficient in scientific and medical knowledge.

If the Congress thinks that the standards of medical proof are too difficult to allow many legitimate cases to be brought before the courts under present law, then perhaps we should consider setting up a Commission representing among others, the American Bar Association, to assist the Congress in drafting a model code that could be presented to the States for adoption. This is more in line with other legal issues that traditionally fall within the jurisdiction of the States, but where the Federal government has stepped in to provide guidance.

The new liability scheme established in S. 1480 requires further refinement. The definition of "hazardous substance" is exceedingly broad and brings too wide an array of businesses under the umbrella of engaging in an "ultrahazardous activity", thus creating strict liability for their operations. The only available defenses under the bill are an Act of God or an Act of war. As a consequence, what S. 1480 does is to simply throw out negligence and nuisance as legal concepts relating to the ongoing activities of America's entire industrial base.

The effects of such a doctrine are clear. For example, in the case of a mining operation where certain chemicals are used in the extraction process, the owner or operator of that mine would have no defenses available to him if an unidentified third party, unconnected to his operation, came onto the mine site and mishandled those chemicals. He would find himself facing a barrage of suits in which he was being hed strictly liable for all of the damages regardless of whether or not he had any control over the situation.

Furthermore, S. 1480 goes one step further by imposing joint and several liability. While that concept was modified by mandating apportionment in the case of an insignificant contributor, many concerns remain. For one, an insignificant contributor is not defined. Equally troubling is the fact that the bill does not provide for apportionment in the case where a significant contributor who, for example, was responsible for 60% of damages must bear the full 100% of the costs because the other contributors cannot be found or identified or are found to be insolvent.

The issue of applying the new standards retroactively remains a troubling one. While the Committee accepted a Domenici amendment to limit the scope of the retroactivity, the issue remains unresolved. To expect individual businesses to absorb the costs imposed by a doctrine not consistent with American standards or jurisprudence is not only unreasonable, but may be unconstitutional.

When the bill was discussed in Committee, it was described as a law that would assist the innocent, individual claimant in seeking damages

against giant corporations. Yet, this bill also creates the option for these same claimants to go to the Fund, seek damages, receive them and subrogate their claims to the Federal government. The Federal government would then litigate to recover the money the Fund had paid. Given the difficulties and costs of mounting private claims on these complex technical issues, it seems to us that most claimants would subrogate their rights to the Federal government.

Such a shift in the balance of litigation is significant. The bill no longer would represent the drawing of an equitable balance between private litigants. Rather, it would create a new avenue for the U.S. Department of Justice to use its massive resources to sue the private sector. Large and small businesses would be treated alike; both would face the power of the Justice Department.

This scenario is particularly perplexing in view of the statement reported in the press of a Justice Department employee who has been directly involved in the development of this legislation. He stated, "government is perfectly prepared to punish the innocent for the sins of the guilty." This position does not square with our sense of justice or with our view of the role of government. When we sought solutions to the problems of hazardous substance exposure, it was not our purpose to unleash a legion of Federal attorneys on the private sector. Rather, we sought to protect unsuspecting victims from unanticipated releases of hazardous substances from abandoned and inactive waste sites and from spills. We sought to assure these citizens that they would not have to sit idly watching government and business argue over who has the responsibility for cleaning up and containing a release that threatened them. We recognized that liability for such response actions can create incentives for responsible parties to act. Now we must question whether S. 1480 is creating liability that will adversely affect the decisionmaking process of American business.

The liability provisions of this bill alter two factors that affect business decisions: (1) the potential exposure of the company's assets to loss and (2) the availability of insurance to protect against these losses. The availability of insurance is particularly crucial to small and medium-sized businesses. However, insurance availability is largely dependent on developing the probabilities of the conditions under which payments would be made. Once these probabilities are defined, the availability, the coverage and the cost of insurance can be established. Thus, the analysis of both asset exposure and insurance availability largely hinges on the predictability of liability for a specific decision. Both of these factors appear to be adversely affected by the provisions of S. 1480.

In general, the development and application of such concepts as strict liability, ultrahazardous activities, and joint and several liability to extensive third party damages take place over an extended time frame. During this period, asset risk assessment and insurance probabilities can be developed. Decisions can be made in an orderly manner. One result of S. 1480 is that it accelerates the development and application of these complex concepts. In doing so, it prevents the private sector decision-making process from being able to assess it liability risks.

Consequently, it would appear that private sector decisions will have to be made on the worst case that might result from passage of

the bill. That case would be: (1) the defendant faces litigation brought by the Federal government; (2) he is one of a few or the single defendant in a case where the release was largely caused by another operator; (3) the more significant contributor is insolvent; (4) actions beyond his reasonable control caused the release, precluding his use of the defenses available under S. 1480 (Act of God and Act of war); (5) large third party damages are at issue; and (6) joint and several liability in S. 1480 expose the defendant to the possibility of paying for all of the damages.

Under this scenario, the elements of this bill will push the decision-maker in directions that will likely lead to adverse consequences for the national economy. Small companies may be forced to close because insurance will be unavailable or too costly. Middle-sized companies will not likely risk their assets for new ventures when faced with these liabilities at existing facilities. This is exactly the case that generated the post-closure liability provision of S. 1480 for closed waste disposal sites. Large corporations, faced with the alternatives of building or expanding facilities in this country or elsewhere, may choose to spend their capital funds in countries with less possibilities of risk. These are economic consequences that this country cannot afford to incur.

We believe that a more reasoned balance can be drawn in this bill. The bill can be focused on response actions that would clean up and contain hazardous substance releases from sites or spills, that would relocate people if necessary or provide them with new water supplies. It could be modified to use Fund monies to pay for selected third party damages. If the legislation were successful in stopping harm from occurring by rapid and effective response, the demand for funds for third party damages would be minimized.

While we continue to support the need for legislation to deal with these problems, we intend to further evaluate the bill in light of our concerns. If there are delays in enacting this legislation, then we would expect Congress and EPA to continue to act on an ad hoc basis on specific situations such as at Love Canal and Memphis, Tennessee.

Pete Domenici.
Lloyd Bentsen.
Howard Baker.

Changes in Existing Law

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

Federal Water Pollution Control Act, As Amended

(33 U.S.C. 466 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

* * * * * * *

OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311. (a) For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of revelant operating or treatment systems;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce:

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facil-

ity, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership;

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section;

(15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the tertorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway;

(17) "Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party.

(b)(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92–500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges of oil into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), where permitted under the International Convention for the Prevention of Pollution or the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, or person in charge, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature.

extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(D) Any costs of removal incurred in connection with a discharge excluded by subsection (a) (2) (C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309 (b) of this Act.

(E) Civil penalties shall not be assessed under both this section and section 309 for the same discharge.

(c) (1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to pro-

vide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and habardous substances and imminent threats of such discharges to the appropriate State and Federal agencies;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section *or the fund established under section 5 of the Environmental Emergency Response Act, as appropriate*, for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substances discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection or under the intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be

a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.

(e) In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(f)(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel, *or against any guarantor of an owner's or operator's liability under the Environmental Emergency Response Act*, in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of

willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

(g) Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or

substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed in case of an inland oil barge $125 per gross ton of such barge, $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party *or against any guarantor of an owner's or operator's liability under the Environmental Emergency Response Act* in any court of competent jurisdiction to recover such removal costs.

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i)(1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such dis-

charge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k).

(j)(1) Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after the effective date of this section, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than $5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of subsection (b) unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance after notification of a violation, shall be considered by the President.

(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to or deposited in, said fund shall remain available until expended.

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and

instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the continguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(n) The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(1), arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(o)(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this Act or any other provision of law, or to affect any State or local law not in conflict with this section.

(p)(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port, or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,-

000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section with respect to hazardous subtasnces. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency within sixty days after the date of enactment of this section. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section.

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been bought against him by the owner or operator.

(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91), to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(q) The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f) (2) and (3) of this section of less than $50,000,000, but not less than $8,000,000.

(r) Nothing in this section shall be construed to impose, or authorize the imposition of any limitation on liability under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974.

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[JOINT COMMITTEE PRINT]

DESCRIPTION OF REVENUE ASPECTS OF PROPOSALS

(S. 1480 and Proposed Amendments)

RELATING TO

HAZARDOUS SUBSTANCE POLLUTION AND LIABILITY

SCHEDULED FOR A HEARING

BY THE

COMMITTEE ON FINANCE

ON

SEPTEMBER 11, 1980

PREPARED FOR THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

SEPTEMBER 9, 1980

U.S. GOVERNMENT PRINTING OFFICE
67-091 O WASHINGTON : 1980 JCS-43-80

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INTRODUCTION

This pamphlet provides descriptions of various legislative proposals relating to releases of oil and hazardous substances into the environment and funding mechanisms to pay for cleanup and damage costs associated with those releases. S. 1480 (the "Environmental Emergency Response Act"), which was reported by the Committee on Environment and Public Works on July 11, 1980 (S. Rept. 96–848), and proposed amendments numbered 1958 (the "Oil Spill Liability Act") and 1965 (the "Oil Pollution Liability and Compensation Act of 1980") are scheduled for a hearing by the Committee on Finance on September 11, 1980.

S. 1480 would establish fees on crude oil, primary petrochemicals (also referred to in the pamphlet as petrochemical feedstocks), and certain inorganic raw materials. These fees would be deposited in a "Hazardous Substance Response Fund." Revenues from the response fund which would be available to compensate for specified costs or damages that result from the release of a hazardous substance into the environment. As reported by the Committee on Environment and Public Works, S. 1480 applies to releases of hazardous substances. Amendments numbered 1958 and 1965 would extend S. 1480 to deal with releases of oil into navigable waters.

Provisions similar to those contained in S. 1480 and the proposed amendments have been considered by various committees of the House of Representatives.[1]

The first part of this pamphlet contains a description of present law. Part II follows with a description of the revenue-related provisions of S. 1480 and the proposed Senate amendments (numbered 1958 and 1965). Part III contains a summary of the similar revenue-related provisions considered by the House of Representatives; and Part IV contains a description of the Administration proposal (introduced as S. 1341, by request). Finally, an Appendix presents a comparison of selected features of State oil spill liability funds.

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[1] H.R. 85 (the "Comprehensive Oil Pollution Liability and Compensation Act") (H. Rept. 96–172, parts I, II, and III) and H.R. 7020 (the "Hazardous Waste Containment Act") (H. Rept. 96–1016, parts I and II) are scheduled for consideration by the House of Representatives on September 10, 1980. H.R. 85 deals with releases of both oil and hazardous substances into navigable waters. H.R. 7020 deals with releases of hazardous wastes into media other than navigable waters, such as air, land and ground water.

I. PRESENT LAW

Overview

Under present law, there is no specially designated fund intended to compensate for damages and economic losses resulting from discharges of environmentally hazardous substances and wastes, such as oil and various organic and inorganic chemicals. Similarly, there is no excise tax or general fee imposed with respect to such substances, and earmarked for use in compensating for damages from harmful discharges. However, there are various State and Federal funds designated to compensate for damages and economic losses resulting from specific types of spills, releases, and discharges. The existing Federal funds that may pay third-party damages apply only with respect to oil spills and not to discharges of hazardous substances. In addition, in some instances, particular fees are imposed under present law with respect to certain petroleum.

Although present law contains numerous provisions which prohibit, or impose liability for, environmentally hazardous discharges, some damages remain uncompensated. This is due, in part, to inadequacies in existing State tort laws and economic and procedural barriers to timely recovery.

Selected Statutes

Federal Water Pollution Control Act ("Clean Water Act"), Section 311

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1331) establishes a $35 million revolving fund maintained by fines, penalties and appropriations of general revenue. The fund may be used for cleanup of releases of oil and designated hazardous substances into navigable waters and restoration of accompanying natural resources. The Act also establishes strict, joint and several liability pertaining to responsibility for cleanup expenses, and authorizes the fund to seek reimbursement from parties who release oil or designated hazardous substances into navigable waters.

The Trans-Alaska Pipeline Authorization Act (TAPAA)

The TAPAA (43 U.S.C. sec. 1651) established a $100 million Trans-Alaska Pipeline Liability Fund, and required the pipeline system (TAPS) to collect and deposit a $.05 charge for each barrel of oil passing through TAPS. The Liability Fund is a quasi-public entity, and the fund's revenues are intended to be used to compensate for damages, including cleanup, restoration of natural resources, and economic loss, resulting from spills of oil transported through TAPS. Owners and operators are strictly liable, and the fund may seek to recover its expenses from responsible parties. Because of a $100 million ceiling to which the Fund is subject, the fee will be suspended for such time as that maximum is achieved and maintained.

Outer Continental Shelf Amendments of 1978

A $200 million Offshore Oil Pollution Compensation Fund was established in the Treasury by the 1978 amendments to the Outer Continental Shelf Lands Act (43 U.S.C. sec. 1331). This Fund consists of monies generated by a fee of not more than $.03 a barrel imposed on owners of oil from the Outer Continental Shelf. The fee is collected by the Internal Revenue Service, and may be reduced when the balance in the Fund reaches the $200 million cap. The Fund may be used to compensate for damages, including cleanup, property damage and loss of income and tax revenue, resulting from spills of oil produced on the Outer Continental Shelf. Liability and financial responsibility requirements for facilities and vessels are defined, and the Fund may seek to recover its expenses from responsible parties. Collection of the fee is not subject to the generally applicable IRS enforcement powers.

Deep Water Port Act of 1974

The Deep Water Port Act of 1974 (33 U.S.C. sec. 1502) established a $100 million fund to compensate for damages resulting from oil pollution from vessels or facilities engaged in deepwater port operations. When operational, this fund will be maintained by a $.02 a barrel fee assessed on oil loaded at a deepwater port. A spiller of deep water port oil would be strictly liable for resulting damages.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act provides for the regulation and control of operating hazardous waste disposal facilities, as well as the transportation, storage, and treatment of these wastes. Permits are required for treatment or storage facilities. The Environmental Protection Agency may sue to require cleanup of an active or inactive disposal site if the site is posing an imminent and substantial hazard to public health and if there is a known, solvent responsible party. However, this provision does not provide funds for cleanup of hazardous waste disposal sites when the owner is unknown, is not responsible, or is financially unable to pay for these costs.

Black Lung Benefits Revenue Act of 1977

The Black Lung Benefits Revenue Act of 1977 (Pub. Law 95–227) imposes an excise tax on the sale of coal (other than lignite) by its producer. The tax is $.50 a ton in the case of coal from underground mines, and $.25 a ton in the case of coal from surface mines (Code sec. 4121(a)). However, the tax imposed on any ton of coal may not exceed 2 percent of the price at which the coal is sold. Receipts from this tax are earmarked for the Black Lung Disability Trust Fund.

The Act also allows coal mine operators to establish tax-exempt black lung trusts to finance liability for claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts (Code sec. 501(c)(21)).

Under the Act, the Federally established Black Lung Disability Trust Fund may be used to compensate for covered disability if a coal mine operator does not initiate or continue timely benefit payments or to reimburse coal mine operators for benefit payments made to miners whose last coal mine employment preceded January 1, 1970. The Secre-

tary of the Treasury is instructed to seek reimbursement for benefit payments from coal mine operators when the Secretary determines that an operator was required to pay all or a portion of the benefits.

State Statutes

States have responded to the specific problems of hazardous substance releases by the enactment of a variety of laws. Responding to a request from the Senate Committee on Environment and Public Works, the Library of Congress identified twelve States which had enacted laws recognizing a right of recovery for damages suffered by private persons. Most of these expressly impose strict liability. Those States were: Alaska, California, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, North Carolina, Oregon, South Carolina, and Washington. Pennsylvania also expressly imposes strict liability, though its statute apparently is restricted to escapes of oil from pipelines which pollute wells. (The Appendix contains a list of States which maintained oil spill liability funds as of 1979.)

II. DESCRIPTION OF S. 1480 AND PROPOSED AMENDMENTS

A. S. 1480—Environmental Emergency Response Act

S. 1480, as reported by the Senate Committee on Environment and Public Works, applies to the release of hazardous chemicals onto land, into ground or surface water or into the air (hereinafter referred to collectively as the environment). It would establish a "Hazardous Substance Response Fund" (hereinafter referred to as the "response fund") for the purpose of providing funds necessary to pay for removal and cleanup costs and certain damage claims resulting from release of hazardous substances (including waste oil but not other petroleum oil) into the environment. However, the bill does not apply to releases giving rise to claims for which an employer is liable under workmen's compensation laws, normal field application of fertilizer, emissions from the exhaust of a motor vehicle, and releases of certain radioactive materials. The bill also would create a permanent "Post-closure Liability Fund" which, under specified conditions, would assume responsibility for liabilities arising in connecton with waste disposal facilities operated and later closed in accordance with permits issued under present law (subtitle C of the Solid Waste Disposal Act).

Purposes of the response fund

The response fund could be used to pay for the costs listed below.

(1) The costs of removal and certain damages resulting from releases if a person liable is not known, cannot be identified, or if a person liable has been presented a claim and has not satisfied it. Covered damages include:

(a) any injury, destruction or loss of government-controlled natural resources, including reasonable damage assessment costs,

(b) loss of income or profits or impairment of earning capacity due to personal injury or injury or destruction of real or personal property or natural resources (limited to 100 percent of lost income in the first year after the incident and 80 percent in the second year); and

(c) all out-of-pocket medical expenses within six years following discovery of exposure due to personal injury in cases in which there is a reasonable likelihood that the release significantly contributes to the injury.

(2) All costs of removal and other costs of carrying out the National Contingency Plan, as amended, including removal costs incurred and approved under the plan.

(3) The costs of establishing and maintaining Federal strike forces, emergency task forces or other response teams under the National

Contingency Plan, including the costs of equipment, similar overhead, and damage assessment capabilities.

(4) The costs of assessing injury, destruction or loss of natural resources.

(5) The costs of Federal or State restoration, rehabilitation or replacement of injured, destroyed or lost natural resources.

(6) Reimbursement of States that use monies they collected or appropriated to pay claims for costs of removal or damages for injury to resources, medical expenses or loss of income, providing such payments are pursuant to the National Contingency Plan and a contract under the Act.

(7) The costs of a program to identify, investigate and take abatement action under the Act.

(8) The costs of research related to the natural resource protection purposes of the Act and section 311 of the Clean Water Act, up to a maximum of $10,000,000 per fiscal year.

(9) The costs of research to develop methods and technology for removal and remedial actions, including portable onsite technology.

(10) The administrative and personnel costs of administering the fund and the Act.

(11) The costs of epidemiologic studies, a victim registry for long-term health effect studies, and diagnostic services not otherwise available to determine the presence of long-latent diseases in exposed populations.

(12) The reasonable costs of expert witnesses to assist victims and the fund in recovering damages.

(13) Payment for loss of income or capital loss due to destruction. loss, condemnation, or restriction on use of fish, seafood or agricultural products and resources when sustained by agricultural producers or processors or commercial fishermen or fish or seafood processors.

(14) The costs of a program to protect the health and safety of response personnel.

Uses of the fund would be restricted further by the requirement that at least two-thirds of the fees and appropriations to the fund ($2.7 billion over six years) be available to finance governmental costs. These costs are defined, in effect, as expenditures of the fund other than for items 9, 12 and 13 above, for item 1 (to the extent it relates to loss of income or profits or medical expenses) or administrative costs described in item 10 (to the extent attributable to uses of the fund which are not chargeable to governmental costs). The Fund could not be used for damage claims under items 1, 3, 4, 5, and 6 resulting from the field application of a registered pesticide. Individuals could not receive compensation for the same damages both under this act and under other laws. Except for items 1, 6, and 13, spending from the Fund would be subject to amounts provided in appropriations acts.

The bill establishes rules for liability of parties responsible for releases, and, generally, the Fund could recover its expenses from responsible parties. However, the Fund could not recover when the responsible party is not known or financially unable to pay, or when the release is caused by an act of God or an act of war. In addition,

the Fund could not recover damages under this act in cases in which emergency response or remedial action was not undertaken unless there were a significant amount of damages or a substantial danger to public health and welfare. Further, the Fund could not recover costs or damages resulting from the field application of a pesticide or from releases due to activities which have received a permit under various Federal environmental laws.

The third-party damages which may be compensated from the fund (items (1)(ii) and (iii), above) are fewer and of narrower scope than the damages for which a discharger of hazardous substances may be liable under other provisions of the bill. For example, a victim would have a Federal cause of action based on the principles of strict, joint and several liability to recover for damages to real and personal property from the discharger of a hazardous substance but could not recover these property damages from the fund.

The response fund would not be liable for any claim in excess of the total monies available in the response fund. These claims could be paid as additional monies are collected from fees or recoveries from responsible parties, etc. In addition, the response fund, if short of money, could borrow from the Treasury up to the amount of the fees and appropriations expected during the next fiscal year. The fees and response fund would terminate after September 30, 1986, unless the Congress took further action.

Financing of the response fund

The response fund would be financed by industry fees, appropriations, penalties, recoveries from responsible parties, transfers of the Clean Water Act section 311 and section 504 funds, and interest on any invested monies. The industry fees could not exceed $250 million in fiscal year 1981, $525 million in fiscal year 1982, and $700 million in subsequent years through fiscal year 1986. Thus, the fees could generate a total of up to $3.575 billion over a six-year period. These fees would be imposed on the producer, manufacturer, importer, or exporter of any of 11 specified primary petrochemical (i.e.. feedstocks) or 34 specified inorganic substances. A fee also would be levied on each barrel of petroleum oil received at a U.S. refinery or imported to, or exported from, the United States. (Thus, fees would be imposed on a total of 46 substances.)

During fiscal year 1981, the fees imposed on these substances would be those specified in the bill. The amount of the fee varies with the substance involved. These fees would continue in effect until the Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, established a rate schedule. This schedule of fees could not result in fees in excess of 2 percent of the price of the taxable chemicals. In addition, the fee on primary petrochemicals feedstocks could not exceed $20.00 a ton, the fee on inorganic substances could not exceed $10.00 a ton, and the fee on petroleum oil could not exceed $.03 a barrel. Further, the total revenues for any particular fiscal year may not exceed the limits specified in the following table:

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[In millions of dollars; fiscal years]

Source of revenue	1981	1982	1983 and each year through 1986	Total 1981–86
Fees				
All primary petrochemicals	162	338	450	2,300
All inorganic raw materials	50	112	150	762
All petroleum oil	38	75	100	513
Subtotal	250	525	700	3,575
Appropriations	35	75	100	510
Total	285	600	800	4,085

In establishing fee rates based upon production volumes of the taxable substances, the bill also would permit the Secretary of the Treasury, beginning in the fourth year, to take into account the frequency with which particular chemicals are released into the environment. Additional provisions are included exempting fees on taxable primary petrochemicals and inorganic raw materials produced by recycling, used as a fuel used in the production of fertilizer, or produced solely as a by-product of pollution controls. The fee could be collected only once on any given quantity of a substance.

The fees would be assessed and collected by the Secretary of the Treasury through the Internal Revenue Service as if the fee were a manufacturers excise tax.

S. 1480 would authorize appropriations to the response fund in the amount of $35 million in fiscal year 1981, $75 million in fiscal year 1982 and $100 million in each of the succeeding four years. Thus, $510 million in appropriations would be authorized over a six-year period.

Post-closure Liability Fund

The bill also would establish a separate Post-closure Liability Fund which would assume completely the liability of owners and operators of hazardous waste disposal facilities granted permits and properly closed under subtitle C of the Hazardous Waste Disposal Act (the Resource Conservation and Recovery Act). This fund would pay for monitoring and maintaining closed sites and assume liability for damages and cleanup expenses of such sites only if the facility meets three requirements. First, the facility must have been issued an individual permit under subtitle C of the Hazardous Waste Disposal Act. Secondly, the facility must have complied with each condition of the permit and the applicable regulations relating to closure or affecting the performance of the facility after closure. Finally, the facility and surrounding area must have been monitored by the taxpayer for up to five years after closure to demonstrate that there is no substantial risk of a release of hazardous waste into the environment.

The post-closure liability revolving fund would be financed by fees imposed on each unit of hazardous waste which is received by a per-

mitted or interim status hazardous waste facility and which will remain at the facility after its closure. The precise level of the fee on any particular substance would be determined by the Administrator of the Environmental Protection Agency who would also be required to conduct a study on the adequacy of the size of the fund. Initially, the fee is to be established at levels adequate to provide $200 million, five years after fee collection begins. The post-closure fees would be separate from the response fund fees, and the post-closure liability fund would be permanent.

Effective date

The bill generally would be effective upon enactment except that fees would not be imposed until 180 days after enactment. However, claims could be paid with respect to loss of income or capital loss involving agricultural producers or processors with respect to releases after January 1, 1974, or involving commercial fishermen or fish or seafood processors with respect to releases after January 1, 1978. The Fund could also pay claims for medical expenses and for loss of income resulting from personal injury due to releases after January 1, 1977, or for diseases discovered after that date. Authority to collect fees or make expenditures from the response fund (but not the Post-closure Liability Fund) would expire on October 1, 1986.

B. Senate Amendments to S. 1480—Oil Pollution Funds

1. Amendment No. 1958 ("Oil Spill Liability Act")

Senate amendment No. 1958 (proposed by Senator Magnuson) deals with issues relating to the discharge of oil into navigable waters. It would establish an "Oil Spill Compensation Fund" to provide the funds necessary for cleanup of, and compensation for damages resulting from, releases of oil into the navigable waters of the United States or the high seas.

The fund would be constituted from fees on crude oil received at any U.S. refinery or exported from or entered into the United States. The Secretary of the Treasury would set the fee at a level not in excess of 3 cents a barrel. The fee would be designed to maintain the fund at the level of $250 million. In addition to the industry fees, fund assets would include monies recovered from parties responsible for spills and interest earned on any invested fund balance.

The fund would be available to pay claims for damages resulting from any discharge of oil including (1) cleanup costs; (2) personal injury; (3) injury to, or destruction of, real or personal property; (4) loss of use of any real or personal property; (5) injury to, or destruction of, natural resources; (6) loss of use of natural resources; (7) loss of profits or impairment of earning capacity resulting from damage to property or natural resources; and (8) loss of Federal, State, or local governmental revenues for a period not to exceed one year.

The new Oil Spill Compensation Fund would replace or absorb other existing Federal funds relating to oil spill liability, including the Offshore Oil Pollution Compensation Fund, the Trans-Alaska Pipeline Liability Fund, the Deep Water Port Fund, and the section 311 revolving fund of the Clean Water Act.

Effective date

The amendment would be effective upon enactment.

2. Amendment No. 1965 ("Oil Pollution Liability and Compensation Act of 1980")

Amendment No. 1965 (proposed by Senator Gravel) deals with issues relating to the discharge of oil into navigable waters. It would establish an "Oil Spill Liability Fund" to provide the funds necessary for cleanup of, and compensation for damages resulting from, releases of oil into the navigable waters of the United States or the high seas.

The fund would be constituted, in part, from a tax of 0.8 cents a barrel on crude oil received at any U.S. refinery or exported from the United States and on petroleum products entered into the United States. If the fund balance is $150 million or less on September 30 of any year, the tax imposed during the following calendar year would be 1.6 cents a barrel. Similarly, if the fund balance exceeds $250 million on September 30, no tax would be imposed during the following

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calendar year. The Secretary of Treasury also could impose a surcharge of up to 1.4 cents a barrel if necessary to retire the fund's obligations to the Treasury.

In addition to the tax revenues, fund assets would include monies recovered from parties responsible for spills, interest earned on any invested fund balance, and any assets received from absorbed or replaced funds.

The fund would be available to pay claims for damages resulting from any discharge of oil including (1) cleanup costs; (2) personal injury; (3) injury to, or destruction of, real or personal property; (4) loss of use of any real or personal property; (5) injury to, or destruction of, natural resources; (6) loss of use of natural resources; (7) loss of profits or impairment of earning capacity resulting from damage to property or natural resources; and (8) loss of Federal, State, or local governmental revenues for a period not to exceed one year.

The new Oil Spill Liability Fund would replace or absorb other Federal funds relating to oil spill liability, including the Offshore Oil Pollution Compensation Fund, the Trans-Alaska Pipeline Liability Fund, the Deep Water Port Fund, and the section 311 revolving fund of the Clean Water Act.

Effective date

The amendment would be effective for discharges occurring after December 23, 1979. The taxes would be effective upon enactment.

III. SUMMARY OF HOUSE OF REPRESENTATIVES ACTION

A. H.R. 85—Comprehensive Oil Pollution Liability and Compensation Act [1]

H.R. 85 deals with issues related to the discharge of oil and hazardous chemicals into navigable waters. It would establish a Comprehensive Oil Pollution Liability Trust Fund and a separate Hazardous Substance Pollution Liability Trust Fund for the purpose of providing the funds necessary to expedite the clean-up of, and the compensation for certain damages resulting from, releases of oil or hazardous substances which may occur in the navigable waters of the United States or the high seas. Except for Treasury regulations, regulations issued under this bill would be subject to a one-House veto.

Excise taxes and trust funds

H.R. 85 imposes excise taxes on crude oil, specified petrochemical feedstocks, and specified inorganic substances. These excise taxes are expected to raise $75 million a year from oil, $50 million from petroleum feedstocks and $25 million from inorganic chemicals. Revenues from the excise tax on crude oil (1.3 cents a barrel) are to be deposited into a new "Comprehensive Oil Pollution Liability Trust Fund," the proceeds of which can be used to finance cleanup costs and pay claims for certain damages resulting from the discharge of oil into the navigable waters of the United States. Similarly, revenues from the excise taxes on petrochemical feedstocks ($1.18 a ton) and on specified inorganic chemicals ($0.31 a ton) are to be deposited into a new "Hazardous Substance Pollution Liability Trust Fund," the proceeds of which can be used to finance cleanup costs and to pay certain claims arising from discharges of hazardous substances into the navigable waters of the United States.

These new trust funds will absorb or replace other Federal funds relating to oil and hazardous substance liability—including the Offshore Oil Pollution Compensation Fund, the Trans-Alaska Pipeline Liability Fund, the Deep Water Port Fund, and the section 311 revolving fund of the Clean Water Act. In addition to financing cleanup and removal costs, both Trust funds could pay (1) claims for property damage, (2) certain claims for loss of profits or impairment of earning capacity, and (3) claims for destruction of natural resources (if the claim is asserted by the President or by a State). The Trust Funds cannot borrow from the United States Treasury except that, to the extent necessary to accomplish the purposes of the fund, each fund

[1] H. Rept. 96–172, parts I, II, and III. This description refers to a substitute for H.R. 85 printed in the Congressional Record for August 27, 1980 (pp. H8029–8040). This substitute is made in order under the rule reported by the House Committee on Rules.

may borrow up to $75 million duing the first year of operation. No claim against a Trust Fund constitutes an entitlement from the United States. Claims against a Trust Fund will be payable only to the extent the Trust Fund has assets in excess of a $30 million "cleanup reserve." Claims which are unpaid due to this reserve requirement will be deferred until excise tax revenues become available to pay them. The excise taxes will terminate after September 30, 1985.

In addition, the bill requires annual reports to the Congress by the Secretary of the Treasury on the operation and status of the trust funds.

Effective date

The provisions imposing excise taxes and establishing the trust funds would be effective October 1, 1980. The excise taxes would terminate after September 30, 1985. The liability and other provisions with respect to oil would be effective 180 days after enactment. Those relating to hazardous substances would be effective upon enactment.

Revenue effect

The excise taxes imposed under H.R. 85 would raise $138 million in fiscal year 1981 and $150 million per year in fiscal years 1982–1985, as shown in the following table.

ESTIMATED REVENUE EFFECTS FROM EXCISE TAXES ON PETROLEUM AND SPECIFIED CHEMICALS IN H.R. 85

[Millions of dollars]

	Fiscal years				
	1981	1982	1983	1984	1985
Excise tax on—					
Petroleum	69	75	75	75	75
Petrochemical feedstocks	46	50	50	50	50
Inorganic feedstocks	23	25	25	25	25
Total	138	150	150	150	150

B. H.R. 7020—Hazardous Waste Containment Act[1]

Trust fund purposes

H.R. 7020 creates a Hazardous Waste Response Trust Fund to address the release of hazardous waste from inactive waste sites to land, air, or ground water. The bill does not deal with the release of oil or other pollutants into the navigable waters of the United States. The trust fund may be used, to the extent provided in appropriations, to pay for (1) containment or removal of hazardous wastes released or in danger of being released into the environment, (2) emergency assistance to minimize the damages resulting from the release or threat of release, and (3) the reimbursement of expenses incurred in cleanup of hazardous waste releases. Rules for liability are provided, and the trust fund may seek to recover its expenses from responsible parties.

In addition, the bill as amended requires annual reports to the Congress by the Secretary of the Treasury on the operation and status of the trust fund.

Trust fund revenues

The trust fund would be constituted from excise taxes, appropriations, and from recoveries from, and penalties imposed on, persons liable for the release of hazardous wastes. An estimated $1.2 billion would go into the trust fund over a 4-year period. Appropriations to the trust fund in the amount of $300 million over 4 years would be authorized. The remaining $900 million would be raised by excise taxes on crude oil, specified petrochemical feedstocks and specified inorganic substances. These excise taxes are expected to raise $164 million in fiscal year 1981 and $179 million per year in fiscal years 1982 through 1985 as shown in the table below.

ESTIMATED REVENUE EFFECTS FROM EXCISE TAXES ON PETROLEUM AND SPECIFIED CHEMICALS IN H.R. 7020

[Millions of dollars]

	Fiscal years				
	1981	1982	1983	1984	1985
Excise tax on—					
Petroleum	32	35	35	35	35
Petrochemical feedstocks	99	108	108	108	108
Inorganic feedstocks	33	36	36	36	36
Total	164	179	179	179	179

Effective date

The excise tax and other provisions of H.R. 7020 would be effective October 1, 1980. The excise taxes would terminate after September 30, 1985, and payments out of the trust fund would be prohibited after September 30, 1985, unless further actions are taken by the Congress.

[1] H. Rept. 96–1016, parts I and II. This description refers to the bill as amended by the Committee on Ways and Means.

IV. ADMINISTRATION PROPOSAL

The Administration's proposal for a comprehensive fund (or "superfund") to compensate for environmental damages from hazardous discharges is substantially embodied in S. 1341 (introduced by request). The bill would create an "Oil, Hazardous Substances and Hazardous Waste Liability Fund," that would be used, to the extent provided in appropriations, to pay for cleanup costs; and, in the case of spills, (1) damages resulting from injury to, or destruction of, real or personal property; (2) damages resulting from injury to, or destruction of, natural resources; and (3) damages resulting from loss of opportunity to harvest marine life due to injury to, or destruction of, natural resources.

The fund would be constituted from $1.625 billion in fees and appropriations (over a 4-year period), from recoveries from, and penalties imposed on, persons liable for releases of oil and hazardous substance, and from amounts presently held in other environmental funds that would be merged into the single fund contemplated in the bill. Appropriations to the fund in the amount of $325 million over 4 years ($50 million in fiscal 1981) would be authorized.

The Secretary of the Treasury would be required to impose fees (within specific limits) on oil refiners and exporters, petrochemical feedstock suppliers, and suppliers of inorganic elements and compounds to generate $1.3 billion in revenue over a 4-year period ($200 million in fiscal 1981). The precise amount of the fee with respect to any particular substance would be set by regulations prescribed by the Secretary of the Treasury. Assessment and collection of the fees would be accomplished by the Treasury and the Internal Revenue Service under the same rules as apply in assessment and collection of manufacturers excise taxes.

The fee and other provisions of S. 1341 would become effective with the first month beginning on or after the 180th day after enactment, and would be the subject of a comprehensive report to Congress within three years of the effective date.

APPENDIX

State Oil Spill Liability Funds

State	Authorizing State statute	Fund name	Method of financing	Size of fund
Alaska	Alaska Statutes, Title 22, 46.03.50 et. seq.	Oil Mitigation Coastal Protection Fund Account.	Annual risk charge, penalties, appropriations.	$30 million.
California	California Codes, 13440.	State Water Pollution Cleanup and Abatement Account.	Appropriations, criminal and civil assessments.	No established size.
Florida	Florida Statutes Annotated, 14:376.11.	Florida Coastal Protection Trust.	Excise tax of 2 cents per barrel, plus registration fees, penalties, judgments.	$35 million.
Maine	Maine Revised Statutes Annotated, Title 38, 551.	Maine Coastal Protection Fund.	Annual license fees based on ½ cents per barrel.	$4 million.
Maryland	Maryland Code Annotated, Natural Resources, 8:1411.	Maryland Oil Disaster Containment, Cleanup and Contingency Fund.	Annual fees ranging from $250 to $5,000.	$1 million.
New Jersey	New Jersey Statutes Annotated, C.23: 11a–3.	New Jersey Spill Compensation Fund.	1 cent per barrel	$25 million.

New York	New York Navigation: 180.	New York Environmental Protection and Compensation Fund.	1 cent per barrel fee	$25 million.
North Carolina	North Carolina General Statutes, 143–483.	Oil Pollution Protection Fund.	Penalities and appropriations funds.	No established size.
Oregon	Oregon Revised Statutes, 468.810.	Oil Spillage Control Fund.	All penalties	No established size.
Texas	Texas Code Annotated, Water, 26. 265.	Texas Coastal Protection Fund.	Appropriations	$5 million.
Virginia	Virginia Code 62.1–44.34:2.7 (1978 Com. supp.).	Oil Spill Contingency Fund.	Appropriations	No established size.
Washington	Washington Revised Code, 90.48.390.	Coastal Protection Fund.	Civil penalties, fees, charges, and 1 cent per gallon from marine use refund.	No established limit.

Source: Library of Congress, Congressional Research Service, March 1979.

[From the Congressional Record, Oct. 1, 1980, pp. S14196-S14197]

Order Re-referring S. 1480 to Committee on Finance, and to Report Back No Later than November 21, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that S. 1480, the Environmental Emergency Response Act, be re-referred to the Committee on Finance for the purpose of consideration of section 5, and to be reported back to the Senate no later than November 21 of this year.

Mr. BAKER. Mr. President, reserving the right to object, I might say I observe the Senator from Kansas is on the floor and he may wish to reserve in his own right since he has been very instrumental in arriving at this solution before we proceed to its consideration.

Mr. DOLE. Mr. President, reserving the right to object—and I will not object—I think it does indicate for all of those present at the meeting we just finished the desire to get this bill before the Senate. That will give us, as I count it, 8 legislative days when we return on the 12th, which would give the Committee on Finance ample time to do whatever work we need to do with reference to the so-called superfund legislation.

I think it is a good agreement and I hope the Committee on Finance can report it prior to the 21st of November, but at least have it before the Senate before that date.

I thank the majority leader and the minority leader for their cooperation.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER (Mr. Pryor). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Kentucky (Mr. Ford).

[From the Congressional Record, Nov. 18, 1980, p. S14631]

Reports of Committees

The following reports of committees were submitted:

By Mr. LONG, from the Committee on Finance, without amendement, and without recommendation:

S. 1480. A bill to provide for liability compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

II

Calendar No. 1151

96TH CONGRESS
2D SESSION

S. 1480

[Report No. 96-848]

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JUNE 21), 1979

Mr. CULVER (for himself, Mr. MUSKIE, Mr. STAFFORD, Mr. CHAFEE, Mr. RANDOLPH, Mr. MOYNIHAN, Mr. SCHWEIKER, Mr. HEINZ, Mr. LEVIN, Mr. HUDDLESTON, Mr. JAVITS, Mr. PELL, Mr. LEAHY, Mr. TSONGAS, Mr. WILLIAMS, Mr. HATFIELD, Mr. COHEN, Mr. MITCHELL, Mr. BRADLEY, Mr. DURKIN, Mr. KENNEDY, Mr. BURDICK, Mr. RIEGLE, Mr. INOUYE, and Mr. MATHIAS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JULY 11, 1980

Reported, under authority of the order of the Senate of July 2 (legislative day, June 12), 1980, by Mr. CULVER, with amendments

[Omit the part struck through and insert the part printed in italic]

OCTOBER 1 (legislative day, JUNE 12), 1980

Referred to the Committee on Finance to consider section 5, with instruction to report back no later than November 21, 1980

NOVEMBER 18 (legislative day, JUNE 12), 1980

Reported by Mr. LONG, without recommendation

A BILL

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Environmental Emergency Response Act".

PURPOSE AND DEFINITIONS

SEC. 2. *(a)* ~~For the purposes of this Act—~~*It is the intent of the Congress that this Act shall apply to hazardous substance disposal sites, facilities, and areas and to releases of hazardous substances from vessels and facilities (including rolling stock) into the navigable waters, groundwater, public water supply, or air, or onto land.*

(b) For the purposes of this Act—

(1) the terms "discharge", "vessel", "public vessel", "United States", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", and "offshore facility", shall have the meaning provided in section 311(a) of the Clean Water Act;

(2) the terms "State", "person", "navigable waters", and "territorial seas" shall have the meaning provided in section 502 of the Clean Water Act;

(3) the terms "disposal", "hazardous waste", and "hazardous waste generation" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act and the terms "generator" and "transporter" shall

have the meaning apparent under subtitle C of the Solid Waste Disposal Act;

(4) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(5) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge, *release, or disposal* of a hazardous substance;

(6) the term "claimant" means any person who presents a claim for compensation under this Act;

(7) the term ~~"containment"~~ *"remedial action" or "remedy"* means those actions consistent with eventual permanent ~~remedy,~~ *remedial action* taken in the event of a discharge or release or significant threat of discharge or release of a hazardous substance *other than* from a hazardous substance disposal ~~site not~~ *facility* in compliance with a permit under subtitle C of the Solid Waste Disposal Act, to prevent or minimize the discharge or release of hazardous substances so that they will not migrate to cause substantial danger to present or future public health or ~~safety,~~ *welfare*, or to the environment. The term includes, but is not limited to,

such onsite actions as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances, recycling or reuse, diversion, destruction, segregation of reactive wastes, *dredging or excavations,* the *repair and* replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, and any monitoring reasonably required to assure that such actions protect the public health *and welfare* and the environment. *The term includes the costs of permanent relocation of residences, businesses, and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or may otherwise be necessary to protect the public health or welfare.* The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances, *or the provision of permanent alternative drinking water supplies* unless the President determines that such actions ~~are (A) the most cost effective means of containment for such a hazardous substance disposal site over the expected~~

~~period of containment, or (B)~~ *(A) are more cost-efficient than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those hazardous substances at the affected facility or site; (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such hazardous substances; or (D)* will result in less environmental impact than onsite ~~containment~~ *remedial actions* at such site;

(8) the term "damages" means damages for economic loss or personal injury or the loss of natural resources as specified in section 4(a)(2) of this Act;

~~(9) the term "emergency response" means actions which the President in his discretion determines must be immediately taken in the event of a discharge or release or the significant threat of a discharge or release of a hazardous substance to prevent, minimize, or mitigate damages or substantial danger to the public health or the environment associated with the discharge or release of hazardous substances. The term includes, but is not limited to, (A) security fencing or other measures; provision of alternative water supplies; temporary evacuation and housing of threatened individuals not~~

~~otherwise provided; and any emergency assistance which may be provided under the Disaster Relief Act of 1974; (B) the transportation, storage, destruction, or treatment and secure disposition offsite of hazardous substances where the President determines that, due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the substances and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger, such offsite actions are essential to protect the public health or safety or the environment; and (C) planning, legal, fiscal, economic investigations, engineering or architectural, to determine the feasibility of containment; monitoring and surveys to identify the extent of the discharge or release or threat of discharge or release, the hazardous substances involved, and the danger to public health, safety, or the environment; and studies, investigations, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions to provide for emergency response and containment or to recover the costs of such emergency response and containment.~~

(9) the term "facility" means (A) any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill,

storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located;

(10) the term "Fund" means the Hazardous Substance Response Fund established under section 5 of this Act *or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 4(j) of this Act, the Post-closure Liability Fund established under section 5(k) of this Act;*

(11) the term "groundwater" means water in a saturated zone or stratum beneath the surface of land or water; ~~and any other water used as a source of public drinking water~~;

(12) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act or section 311(p) of the Clean Water Act;

(13) the term "hazardous substance" means (A) any hazardous substance designated under section 311(b) of the Clean Water Act, (B) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act *(but not including any waste the regulation*

of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (C) any toxic pollutant listed under section 307(a) of the Clean Water Act, (D) any hazardous air pollutant listed under section 112 of the Clean Air Act, (E) any imminently hazardous chemical substance or mixture as that term is defined in section 7 of the Toxic Substances Control Act, (F) any substance or mixture which may be designated under section 3(a)~~(1)~~*(2)* of this Act, and (G) any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. *The term does not include petroleum, including crude oil and fractions thereof which are not otherwise specifically listed or designated as hazardous substances under subparagraphs (A) through (F) of this paragraph;*

(14) the term "natural resources" includes land, fish, wildlife, biota, air, water, and other such re-

sources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(15)*(A)* in the case of any abandoned ~~onshore or offshore~~ facility or ~~hazardous substance disposal~~ site, the term "owner or operator" shall include the person who owned or operated *or otherwise controlled activities at* such facility or site immediately prior to such abandonment or at the time of any discharge, release, or disposal of a hazardous substance;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the generator of such hazardous substance shall not be considered to have caused or contributed to any discharge or release during such transportation which resulted solely from circumstances or conditions beyond his control;

(16) the term "release" means—

(A) any spilling, leaking, pumping, pouring, emitting, emptying, discharging, *injecting*, escaping, leaching, or dumping *into the environment*, or

(B) any other release into the environment which presents or may present a substantial danger to the public health *or welfare* or the ~~environment; and~~ *environment.*

Such term shall not include—

(i) any release which results in exposure to persons solely within the workplace, with respect to a claim for which the employer of such persons is liable under applicable worker's compensation law;

(ii) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, to the extent such release is covered by financial protection required by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 3(c) or any other removal or remedial action, from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978;

(iii) the normal field application of fertilizer; or

(iv) emissions from the exhaust of a motor vehicle;

(17)*(A)* the term "removal costs" or "costs of removal" means (*i*) costs incurred under section 311 (c), (d), (e), (b)(6) (C) or (D), or (f)(4) of the Clean Water Act in connection with a hazardous substance *(as defined in this Act)*, (*ii*) costs incurred under section 504(b) of the Clean Water Act, and (iii) other costs of measures taken to prevent, minimize or mitigate damages or substantial danger to the public health *or welfare* or the environment associated with the discharge, release, or disposal or threatened discharge, release, or disposal of a hazardous substance or to clean up or remove a hazardous substance from the environment, *including the costs of remedy or remedial action and the costs of carrying out section 3(c)(3) of this Act;*

(B) as part of the meaning of "remove" or "removal" under section 311(a) of the Clean Water Act and subparagraph (A) of this paragraph, such terms include, but are not limited to, security fencing or other measures to limit access; provision of alternative water supplies; temporary evacuation and housing of threatened individuals not otherwise provided; and any

emergency assistance which may be provided under the Disaster Relief Act of 1974; and

(18) the term "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Clean Water Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Clean Water Act, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act, as amended, from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compli-

ance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act, as amended, (H) any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated or approved under these sections, and (I) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, as amended, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954, as amended.

~~PROHIBITED~~ RELEASE, NOTICE, PENALTY, RESPONSE

SEC. 3. (a)(1) *For the purposes of this Act, the Congress hereby finds and declares that the manufacture, use, trans-*

portation, treatment, storage, disposal, and release of hazardous substances are ultrahazardous activities.

(2) The President shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 2(13) of this Act, such elements and compounds which, when discharged or released ~~in any quantity~~ into the environment, may present substantial danger to the public health *or welfare* or the environment, and, *if the President deems it appropriate,* in such regulations ~~may determine those quantities~~ *set that quantity* of any *such* hazardous substance the discharge or release of which may be harmful to the public health *or welfare* or the environment.

~~(2) The discharge of any hazardous substance in violation of section 311(b)(3) of the Clean Water Act or the release or disposal of any hazardous substance, including any release into or upon groundwater, air, land, the navigable waters, or the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to or under the exclusive management authority of the United States (including, resources under the Fishery Conservation and Management Act of 1976), is prohibited.~~

(3)(A) Any person (including, for purposes of this subparagraph, any agency or department of the United States Government) in charge of a vessel or any public vessel owned

by the United States or a State or political subdivision thereof or an onshore facility or an offshore facility shall, as soon as such person has knowledge of any discharge, release, or disposal of a hazardous substance from such vessel or facility ~~in violation of paragraph (2) of this subsection,~~ *other than a federally permitted release,* immediately notify the appropriate agency of the United States Government of such discharge, release, or disposal.

(B) Any person—

(i) in charge of a vessel from which a hazardous substance (other than as defined in section 2*(b)*(13)(G) of this Act) is discharged or released, ~~in violation of this subsection~~ *other than a federally permitted release,* into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(ii) in charge of a vessel from which a hazardous substance (other than as defined in section 2*(b)*(13)(G) of this Act) is discharged or released, ~~in violation of this subsection~~ *other than a federally permitted release,* which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction

of the United States at the time of the discharge or release, or

(iii) in charge of an onshore facility or an offshore facility from or at which a hazardous substance (other than as defined in section 2*(b)*(13)(G) of this Act) is discharged, released, or disposed of ~~in violation of this subsection,~~ *other than a federally permitted release*

who fails to notify immediately the appropriate agency of the United States Government as soon as such person has knowledge of such release, *discharge, or disposal* shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

(C) Within twenty-four hours of receipt of any notification required by subparagraph (B) (i) or (iii) of this paragraph, the administrator of said agency shall notify the affected State agency or department designated by the Governor to receive notice of such discharge, release or disposal.

(4)(A) Within one hundred and eighty days after the enactment of this Act, any person who *owns or operates, or has reason to believe that he or she* may be subject to liability for, a ~~hazardous substance disposal site~~ *facility or site at which hazardous substances (other than as defined in section 2(b)(13)(G) of this Act) are stored or disposed of which is* not in compliance with a permit or accorded interim status under subtitle C of the Solid Waste Disposal Act shall notify the

Administrator of the Environmental Protection Agency of the existence of such *facility or* site, specifying the amount and type of any hazardous substances to be found there, and any known, suspected, or likely discharges or releases of such substances from such *facility or* site. The Administrator may prescribe the manner and form of the notice and the information to be included. *The Administrator shall notify the affected State agency or department designated by the Governor to receive notice of such facility or site.* Any such person who knowingly fails to notify the Administrator of the existence of any such *facility or* site shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who fails to provide the notice required by this subsection shall not be entitled to any limitation of liability under this or any other law or to any defenses to liability set out in section 4 of this Act.

(B) After the enactment of this Act, it shall be unlawful for any person required to provide the notification of a ~~hazardous substance disposal~~ *facility or* site set out in subparagraph (A) of this paragraph knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable ~~any records relating to the site or any hazardous substances~~ *or falsify any records relating to the location, title, or condition of the facility or site or the identity, charac-*

teristics, quantity, origin, or condition (including containeri-
zation and previous treatment) of any hazardous substances contained or deposited therein. Any person who violates this subparagraph shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

(C) Any deed or conveyance for any facility or site at which any hazardous substance (other than as defined in section 2(b)(13)(G) of this Act) has been disposed of or stored, or which has been contaminated by any release of such a hazardous substance, shall disclose upon its face the identity, quantity, location, condition, and circumstances of such disposal, storage, or contamination, to the full extent known to or ascertainable by the owner or other conveyer of such facility or site. Such deed or conveyance shall also contain such restrictive convenants limiting the subsequent use or modification of such facility or site as may be necessary to protect the public health or welfare. The disclosures and restrictive covenants in such deed or conveyance shall be made a matter of public record in the registry of deeds or similar institution for the political subdivision in which said facility or site is located. Any person who knowingly violates the requirements of this subparagraph shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person shall be held liable under section 4 of this Act as an owner of such

facility or site in the case of any discharge, release, or disposal of a hazardous substance from such facility or site.

(b) The Administrator of the Environmental Protection Agency is authorized to establish and *to* enforce in accordance with section*s 3007 and* 3008 of the Solid Waste Disposal Act and sections 308 and 309 of the Clean Water Act, such control or removal *or remedial action* requirements as the Administrator deems appropriate to protect the public health *and welfare* and the environment for any ~~hazardous substance disposal site~~ *facility or site at which hazardous substances are stored, treated, or disposed of which is* not in compliance with a permit or accorded interim status under subtitle C of the Solid Waste Disposal Act.

(c)(1) Whenever any hazardous substance is discharged, released, or disposed of, or there is (A) a substantial threat of such a discharge, ~~or~~ release, *or disposal* into the environment, or (B) a release *or substantial threat of release* into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare, the President is authorized to act to remove or arrange for the removal of, ~~or~~ *and* provide for ~~the containment of,~~ *remedial action concerning,* such hazardous substance, pollutant, or contaminant at any time (including the removal from any contaminated natural resource), or take any *other* emergency response measure which in the judg-

ment of the President is necessary to protect the public health *or welfare* or the environment, unless the President determines such removal *and remedial action* will be done properly by the owner or operator of the vessel or onshore facility or offshore facility ~~or hazardous substance disposal site~~ from which the discharge or release occurs, or *by any* other responsible party.

(2) Unless (A) the President finds that (i) continued removal actions are immediately required to prevent, limit or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis; or (B) the President has determined the appropriate remedial actions as provided in paragraph (4) and the State or States in which the source of the release is located have complied with section 6(a)(2)(A) of this Act, expenditures from the Fund, other then those authorized by paragraph (3) of this subsection, shall not continue after $1,000,000 has been obligated or six months has elapsed from the date of initial response to a release or discharge of hazardous substances.

(3) Whenever (A) any hazardous substance is released, discharged or disposed which, in the judgment of the President, may present a danger to public health or welfare or the environment, or (B) there is substantial threat of such release, or (C) the President has reason to believe that illness,

disease or complaints thereof may be attributable to exposure to a chemical or other toxic substance, and there is evidence to suspect a release of such substance, the President may undertake such investigations, monitoring, surveys, testing or other information gathering as are necesary to identify the existence and extent of the discharge or release or threat thereof, the hazardous substances involved, the source of such substance, and the danger to public health, welfare or the environment. As appropriate, the President may, in addition, undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as are necessary to determine and direct removal and remedial actions, to recover the costs of such removal and remedial actions, and to enforce the provisions of this Act.

(4) The President shall determine appropriate remedial action in consultation with the State.

~~(2)~~ *(5)* Within one hundred and eighty days after the enactment of this Act, the President shall revise and republish the National Contingency Plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Clean Water Act to reflect and effectuate the responsibilities and powers created by this Act in addition to those matters specified in section 311(c)(2) of the Clean Water Act. Such revision shall include a new section of the Plan to be known as the National Hazardous Sub-

stance ~~Disposal Site~~ Response Plan, which shall include at a minimum—

(A) methods for discovering and investigating ~~such~~ *facilities or* sites *at which hazardous substances have been disposed of or otherwise come to be located;*

(B) methods for evaluating, including analyses of relative cost, and ~~containing~~ *remedying* any discharges or releases or threats of discharges or releases from such *facilities or* sites which pose substantial danger to the public health or the environment;

(C) methods and criteria for determining the appropriate extent of ~~emergency response,~~ *removal, remedy,* ~~containment,~~ and other measures authorized by this Act;

(D) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

(E) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

(F) a method for and assignment of responsibility for reporting the existence of such *facilities or* sites which may be located on federally owned or controlled

properties and any releases of hazardous substances from such *facilities or* sites.

Such plan shall specify a role for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor. Such plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Clean Water Act. Following publication of the revised National Contingency Plan, the removal of hazardous substances and actions to minimize damage from hazardous substance discharges or releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the National Contingency Plan.

(d) Notwithstanding any other provision of law, upon receipt of ~~evidence~~ *information* that the handling, storage, treatment, transportation, *discharge, release,* or disposal of any hazardous substance may present a danger to public health *or welfare* or the environment, the Administrator of the Environmental Protection Agency or the State (or their authorized agents as the case may be) may require any person *causing or* contributing to such danger to take such

actions as may be necessary to ascertain the nature and extent of such danger, or may bring suit in the appropriate district court of the United States to require any such person to take such actions.

(e) In awarding contracts to any person engaged in removal or remedial actions, the Administrator shall require compliance with Federal health and safety standards by contractors and subcontractors as a condition of such contracts.

(f) Notwithstanding any other provision of law and subject to the authority of section 6 of this Act, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purposes of this Act. Upon determination that such procedures are necessary to effect the purposes of this Act, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

LIABILITY FOR DAMAGES AND REMOVAL COSTS

SEC. 4. (a) Except where the person *otherwise* liable under this subsection can prove that a discharge, release, or disposal was caused solely by ~~(i)~~ an act of God or ~~(ii)~~ an act of war, and notwithstanding any other provision or rule of law—

(i) the owner or operator of a vessel or ~~an on-shore or offshore~~ *a* facility,

(ii) any person who at the time of disposal of any hazardous substance owned or operated any facility or site at which such hazardous substances are disposed of,

(iii) any person who by contract, agreement, or otherwise arranged for disposal, treatment, or transport for disposal or treatment by any other party or entity of hazardous substances owned or possessed by such person, at facilities or sites owned or operated by such other party or entity and containing such hazardous substances, and

(iv) any person who accepts any hazardous substances for transport to disposal or treatment facilities or sites selected by such person,

from which a hazardous substance is discharged, released, or disposed of ~~in violation of section 3(a) of this Act, including any release excluded from the definition of "discharge" under section 311(a)(2) of the Clean Water Act,~~ *or from which any pollutant or contaminant is released resulting in action under section 3(c)(1) of this Act,* ~~and any other person who caused or contributed or is causing or contributing to such discharge, release, or disposal, including but not limited to prior owners, lessees, and generators, transporters, or disposers of such hazardous substances,~~ shall be jointly, severally, and strictly liable for—

(1)(A) all costs of removal, ~~containment, or emergency response~~ *or remedial action* incurred by the United States Government or a State, and

(B) any other costs or expenses incurred by any person to remove a hazardous substance as the terms "remove" or "removal" are defined in section 311(a)(8) of the Clean Water Act; and

(2) all damages for economic loss or loss due to personal injury or loss of natural resources resulting from such a discharge, release, or disposal, including—

(A) any injury to, destruction of, or loss of any real or personal property, including relocation costs;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from *personal injury or from* injury to or destruction of real or personal property or natural resources, without

regard to the ownership of such property or resources;

(F) all out-of-pocket medical expenses, including rehabilitation costs *or burial expenses*, due to personal injury; and

(G) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State: *Provided, however, That no liability to the United States or State shall be imposed under subsection (a)(2)(C) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license.* The President, or the authorized representative of any State,

shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.

~~(c) Notwithstanding the ordinary requirements for proof of cause in fact or proximate cause of damage, injury, or loss, a person liable under this section for any discharge, release, or disposal of any hazardous substance shall be liable for all medical expenses under subsection (a)(2)(F) of this section if a reasonable person could conclude that such medical expenses and the injury or disease which caused them are reasonably related to such discharge, release or disposal, including, but not limited to, the consideration of statistical correlation and the increase of incidence of such injury or disease in the exposed population above that which is otherwise statistically probable. The inability of a claimant to demonstrate (1) the particular identity of the substance which caused the injury or disease, (2) the particular source of such substance, (3) the pathway of such substance en route to the injured party, or (4) an explanation of the etiology of the substance in the injured party, shall not bar recovery.~~

(c)(1) LIABILITY FOR MEDICAL EXPENSES.—A person liable for the discharge, release, or disposul of any hazardous substance under this section shall be liable for medical expenses as defined in subsection (a)(2)(F) of this section where such expenses were incurred in the treatment of injury or disease which such discharge, release or disposal caused or to which it significantly contributed.

(2) RELEVANCY EXCLUSIONS.—In connection with any claim for medical expenses under paragraph (1) of this subsection, the court may admit as relevant to the issue of causation evidence tending to establish that the hazardous substance in question causes or contributes to injury or disease of the sort claimed to have been suffered by the claimant, including, but without limitation, evidence indicating (A) an increase of incidence of such injury or disease in the exposed population above that which is otherwise probable, (B) results of pertinent epidemiological studies (without regard to the size of the sample), (C) results of pertinent animal studies, (D) results of pertinent tissue culture studies, (E) results of pertinent microorganism culture studies, and (F) results of laboratory or toxicologic studies.

(3)(A) PRESUMPTION OF CAUSE.—In connection with any claim for medical expenses brought pursuant to subparagraph (1) of this subsection, where the claimant introduces evidence sufficient to enable the trier of fact to find (i) that

the claimant was exposed to a hazardous substance found in a discharge, release, or disposal which the defendant caused or to which he contributed, (ii) such exposure was in a quantity or for a duration with respect to which there is a reasonable likelihood that it is sufficient to cause or significantly contribute to injury or disease of the class or type of which the claimant complains, and (iii) that there exists a reasonable likelihood that exposure to such substance causes or significantly contributes to injury or disease of the class or type which the claimant claims to have suffered, then it shall be presumed that defendant caused or significantly contributed to that injury or disease.

(B) The presumption defined in subparagraph (A) of this paragraph affects only the burden of going forward with the presentation of the case. Nothing in this paragraph shall affect the burden of proof which shall remain with the claimant in accordance with rule 301 of the Federal Rules of Evidence.

(d) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent, *both procedurally and substantively,* as any nongovernmental entity, including liability for removal costs under *this* section. ~~4 of this Act.~~

(e) The owner or operator of a vessel shall be liable in accordance with this section and section 311 of the Federal Water Pollution Control Act and as provided under section 8 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

~~(f) Any generator or transporter of any hazardous substance who knew or had reason to know that a discharge, release, or disposal of such hazardous substance could reasonably be anticipated to result from the transfer of such substance to the owner or operator of the facility which was the source of a discharge, release, or disposal subject to liability under this section shall be deemed to be a person who caused or contributed to such discharge, release, or disposal.~~

(f)(1) In any case where a person held liable under this section can demonstrate by a preponderance of the evidence that (A) the contribution of such person to a discharge, release, or disposal of a hazardous substance can be distinguished or apportioned and (B) such contribution was not a significant factor in causing or contributing to the discharge, release, or disposal or the damages resulting therefrom, the liability of such person shall be limited to that portion of the release or damages to which such person contributed.

(2) In any action brought under this section or section 6(c) of this Act, a person held jointly and severally liable with one or more other persons is entitled to seek contribution

from such persons to the extent of the proportionate liability of such persons. In any case where a person held liable under this section alleges that the discharge, release, or disposal or the consequent damages are solely or in part due to the act or omission of a third party, such person retains all rights against such third party and shall be entitled to join such third party as a defendant in an action under this section or section 6(c) of this Act.

(3) Any matter or action concerning limitation or apportionment of liability under paragraph (1) or contribution under paragraph (2) of this subsection shall occur following determination of liability under subsection (a) of this section and appropriate payment of claims to any claimant, except to the extent such matter may be resolved pursuant to Rule 56 of the Federal Rules of Civil Procedure. The claimant is not an indispensable party in such matter or action.

(4) In apportioning or limiting liability of any party under this section, the trier of fact may consider factors, including—

(i) the ability of the party to demonstrate that his contribution to a discharge, release, or disposal of a hazardous substance can be distinguished;

(ii) the amount of hazardous substance involved;

(iii) the degree of toxicity of the hazardous substance involved;

(iv) the degree of involvement in the manufacture, treating, transporting, disposing of the hazardous substance; and

(v) the degree of cooperation with Federal, State, or local officials to prevent any harm to the public health or the environment.

(g) If the owner or operator of a ~~hazardous substance disposal site,~~ *facility or site at which hazardous substances are stored or disposed of,* who owned or operated the property at the time it was utilized for the *storage or* disposal of any hazardous substances, and who utilized the *facility or* site at that time for the *storage or* disposal of any hazardous substances produced, transported, *stored,* or disposed of by such owner or operator, fail to properly provide ~~emergency response or containment~~ *removal or remedial action* upon request of the President, such owner or operator shall be liable to the United States for punitive damages in an amount three times the amount of any removal costs expended by the Fund under this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(h) No person shall be liable under this Act for damages as a result of acts taken or omitted in preparation for, or in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan or at the direction of an on-scene coordinator appointed under such plan, with

respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the possibility thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(i) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer from the owner or operator of a facility, or from any person who may be liable for a release under this section, to any other person the liability imposed under this section: Provided, That this subsection shall not apply to a transfer in a bona fide conveyance of a facility or site (1) between two parties not affiliated with each other in any way, (2) where there has been an adequate disclosure in writing consistent with section 3(a)(4)(C) of this Act of all facts and conditions (including potential economic consequences) material to such liability, and (3) to a transferor who can provide assurances of financial responsiblity and continuity of operation consistent with the degree and duration of risks associated with such facility or site.

(j)(1) The liability established by this section or any other law for the owner or operator of a hazardous waste

disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 5(k) of this Act when—

(A) such facility and the owner and operator thereof have complied with each condition or requirement of such permit and with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration off site or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency determines that any such

facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator shall so notify the owner and operator of such facility and the administrator of the fund established by section 5(k) of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administator that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 5(k) of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period for monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(k) No person (including the United States or any State) may recover under the authority of this section for any removal costs or damages resulting from the field application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or the costs of removal of such hazardous substance.

(l) Recovery by any person (including the United States or any State) for removal costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or the costs of removal of such hazardous substance. In addition, costs of removal incurred by the Federal Government in connection with a discharge specified in section 2(b)(18) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

(m) Recovery by any person (including the United States or any State) for removal costs or damages resulting from a substance determined to be hazardous only under section 2(b)(13)(G) of this Act and not responded to by the President under section 3(c)(1)(B) of this Act, shall be pursuant to other applicable law in lieu of this section. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or the costs of removal of such hazardous substance.

(n)(1) No person (including the United States, the Fund, or any State) may recover under the authority of this section, nor may any money in the Fund be used under section 6 of this Act for the payment of any claim, for damages specified under subsection (a)(2) (A), (B), (C), (D), (G), or (E) (other than for loss resulting from personal injury) of this section, nor may any money in the Fund be used under section 6(a)(1) (E) or (F) of this Act, where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) No person (including the United States, the Fund, or any State) may recover under the authority of this section,

nor may any money in the Fund be used under section 6 of this Act for the payment of any claim, for damages specified under subsection (a)(2)(F) of this section, or under subsection (a)(2)(E) of this section (for loss of income or profits or impairment of earning capacity resulting from personal injury), where the exposure of the claimant to a release of a hazardous substance has occurred wholly prior to January 1, 1977, and the claimant has discovered or has knowledge of his injury or disease prior to such date.

(3) No person (including the United States, the Fund, or any State) may recover under the authority of this section for damages specified under subsection (a)(2)(F) of this section or under subsection (a)(2)(E) of this section (for loss of income or profits or impairment of earning capacity resulting from personal injury), where the exposure of the claimant to a release of a hazardous substance has occurred wholly prior to January 1, 1977, but the claimant has not discovered or had knowledge of his injury or disease until after such date.

(4) For the purposes of this subsection, the costs of temporary or permanent relocation of residences and provision of alternative water supplies shall be deemed costs of removal and not damages specified in subsection (a)(2)(A) of this section.

(5) Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any

other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or the costs of removal of such hazardous substance.

RESPONSE FUND ESTABLISHMENT

SEC. 5. (a) There is hereby established in the Treasury of the United States a Hazardous Substance Response Fund ~~not to exceed $500,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) and (3) of this section being paid into such Fund~~. The Fund shall be administered by the President and the Secretary of the Treasury, as specified in this section. The Fund may sue and be sued in its own name.

(b)*(1)* The Fund shall be constituted from—

~~(1)~~*(A)* all fees collected pursuant to subsection (c);

~~(2)~~*(B)* all moneys recovered on behalf of the Fund under section 6;

~~(3)~~*(C)* all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act;

(D) amounts appropriated to the Fund pursuant to paragraph (3) of this subsection;

(E) all moneys transferred to the Fund under section 9(d)(4) of this Act;

(F) all interest received from the investment of moneys held by the Fund pursuant to subsection (h)(2).

(2) The total amount which may be collected in fees under subsection (c) shall not exceed—

(A) $250,000,000 for fiscal year 1981,

(B) $525,000,000 for fiscal year 1982, and

(C) $700,000,000 for each of fiscal years 1983 through 1986.

(3) There are authorized to be appropriated to the Fund for the fiscal year—

(A) 1981, $35,000,000,

(B) 1982, $75,000,000,

(C) 1983 and each fiscal year thereafter through 1986, $100,000,000.

~~(c)(1) Beginning ninety days after the enactment of this Act, the Secretary of the Treasury shall collect from each manufacturer, importer, or generator of a hazardous substance, as appropriate, a fee on each unit of hazardous substance produced, manufactured, or imported into the United States and each unit of hazardous waste generated. The unit for application of such fees shall be the quantity determined under section 311(b)(4) of the Clean Water Act, or the minimum quantity required to be reported under section 3002, 3003, 3004, or 3005 of the Solid Waste Disposal Act, or~~

such other unit as the President determines to be appropriate for the measurement of such fee. Any such fees shall be established, or modified pursuant to paragraph (2) of this subsection, at levels adequate to assure, to the extent reasonably possible, that (A) the percentage of the total fees collected from each of the various categories of hazardous substance and modes of discharge or release is equitable, based upon the claims and payments experience of the Fund and projections thereof; (B) complexity in application and collection of such fees is minimized; (C) the costs imposed by such fees are spread as broadly as possible through the economy; and (D) incentives to proper handling and disincentives to improper or illegal handling or disposal of hazardous substances are maximized.

(2) The Secretary of the Treasury, after consulting with appropriate Federal agencies, may promulgate rules and regulations relating to the collection of the fees authorized by paragraph (1) and, from time to time, the modification thereof. Modifications shall become effective on the date specified therein, but no earlier than the ninetieth day following the date the modifying regulation is published in the Federal Register. Any modification of the fee shall be designed to assure that the Fund is maintained at a level adequate to meet potential obligations. and not more than $500,000,000. No regulation that modifies fees, nor any modification of such

a regulation, whether or not in effect, may be stayed by any court pending completion of judicial review of that regulation or modification.

(3)(A) Any person who fails to collect or pay fees as required by the regulations promulgated under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid and the interest on these fees at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (d)(2). Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General shall, at the request of the Secretary of the Treasury bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United

~~States shall have access to such required material for the purpose of audit and examination.~~

(c)(1) In order to allocate the costs as broadly as possible among those who may generate, distribute, transport, dispose, or benefit from the use of hazardous substances while minimizing the burden of collection, fees shall be imposed early in the manufacturing cycle on the basic elements and compounds from which hazardous substances are generated. Beginning one hundred and eighty days after the enactment of this Act—

(A) each supplier of primary petrochemicals shall collect a fee established in accordance with this section on behalf of the Fund for each pound of primary petrochemicals supplied to any other person or used by such supplier,

(B) each supplier of inorganic raw materials shall collect a fee established in accordance with this section on behalf of the Fund for each short ton of inorganic raw materials supplied to any other person or used by such supplier, and

(C) each owner of a refinery receiving crude oil or unfinished petroleum oil shall pay a fee established in accordance with this section per barrel of oil received, each owner of petroleum oil for export shall pay a fee established in accordance with this section per

barrel of oil exported at the point of export or loading for export, and each owner of petroleum oil for entry into the United States shall pay a fee established in accordance with this section per barrel of oil entered at the point of entry or unloading for entry, whether for import or transfer to a foreign country.

(2)(A) Under regulations promulgated by the Secretary of the Treasury, the fees in paragraph (1) of this subsection shall be imposed on the basis of a schedule of rates established by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, consistent with subsections (d) and (e) of this section. The schedule of rates may be modified annually in accordance with this section, but in no event shall the fee exceed 2 per centum of the list price of the primary petrochemical, inorganic raw material, or petroleum oil when sold at arms length.

(B) No regulation that establishes fees promulgated by the Secretary of the Treasury, nor any modification of such a regulation, whether or not in effect, may be stayed by any court pending completion of judicial proceedings for the review of that regulation or modification.

(C) Any fees shall be imposed only once under this subsection on any quantity of petroleum oil, primary petrochemical, or inorganic raw material, except that any fee imposed on any quantity of refined petroleum used as a feedstock or a

primary petrochemical shall be added, once and only once, to the fee imposed on that quantity pursuant to paragraph (1)(C) of this subsection.

(d)(1) The fee imposed on any primary petrochemical shall not exceed $20 per short ton of primary petrochemical: Provided, however, That the aggregate amount of such fees shall not exceed such amount as is necessary to produce revenues equal to, for the fiscal year—

(A) 1981, $162,000,000,

(B) 1982, $338,000,000, and

(C) 1983, and each fiscal year thereafter through 1986, $450,000,000 or such amount as determined by regulation pursuant to subsection (e)(1)(A) of this section.

(2) The fee imposed on any inorganic raw material shall not exceed $10 per short ton of inorganic raw material: Provided, however, That the aggregate amount of such fees shall not exceed such amount as is necessary to produce revenues equal to, for the fiscal year—

(A) 1981, $50,000,000,

(B) 1982, $112,000,000, and

(C) 1983, and each fiscal year thereafter through 1986, $150,000,000, or such amount as determined by regulation pursuant to subsection (e)(1)(A) of this section.

(3) The fee imposed on any crude or unfinished petroleum oil shall not exceed 3 cents per barrel of petroleum oil received, exported or entered: Provided, however, That the aggregate amount of such fees shall not exceed such amount as is necessary to produce revenues equal to, for the fiscal year—

(A) 1981, $38,000,000,

(B) 1982, $75,000,000, and

(C) 1983, and each fiscal year thereafter through 1986, $100,000,000, or such amount as determined by regulation pursuant to subsection (e)(1)(A) of this section.

(4) Beginning in fiscal year 1981 and until modified pursuant to subsection (c)(2)(A) of this section, the fee imposed on primary petrochemicals, inorganic raw materials, and petroleum oil shall be—

	Dollars per short ton
Acetylene	*3.88*
Benzene	*3.88*
Butane	*3.88*
Butylene, excluding that portion used to make butadiene	*3.88*
Butadiene	*3.88*
Ethylene	*3.88*
Methane, excluding that portion used to make ammonia	*3.44*
Naphthalene	*3.88*
Propylene	*3.88*
Toluene, excluding that portion used to make benzene	*3.88*
Xylene	*3.88*
Antimony	*2.66*
Antimony trioxide	*2.24*
Antimony sulfide	*1.94*
Arsenic	*2.66*
Arsenic trioxide	*2.04*
Barium sulfide	*2.18*
Bromine	*2.66*
Cadmium	*2.66*

	Dollars per short ton
Chlorine	*2.66*
Chromium	*2.66*
Chromite	*1.12*
Potassium dichromate	*1.02*
Sodium dichromate	*1.12*
Cobalt	*2.66*
Copper sulfate	*1.13*
Cupric oxide	*2.14*
Cuprous oxide	*2.37*
Hydrochloric acid	*0.18*
Hydrogen fluoride	*2.53*
Lead	*2.66*
Lead oxide	*2.48*
Mercury	*2.66*
Nickel	*2.66*
Nitric acid, excluding that portion used to make fertilizers	*0.15*
Phosphorous	*2.66*
Phosphoric acid, excluding that portion used to make fertilizers	*0.19*
Potassium hydroxide	*0.11*
Sodium hydroxide	*0.11*
Sulfuric acid, excluding that portion used to make fertilizers	*0.16*
Stannous chloride	*1.71*
Stannic chloride	*1.27*
Zinc	*2.66*
Zinc oxide	*1.15*
Ammonia, excluding that portion used to make fertilizers or used to make nitric acid	*0.11*
	Cents per barrel
Petroleum oil	*0.756*

(e)(1) Beginning three years after the fee is first initiated and biannually thereafter, the Secretary of the Treasury may, in consultation with the Administrator of the Environmental Protection Agency, adjust by regulation the amount of the fee to better reflect the claims experience of the Fund for any primary petrochemical, inorganic raw material, or petroleum oil subject to a fee under this section. In making such adjustments, the Secretary shall, to the extent reasonably practicable, modify the fee so that:

(A) the percentage of the total annual moneys collected is approximately proportional to the incidence,

as estimated from available information, of all primary petrochemicals, of all inorganic raw materials, and of crude oil (and their intermediates, final products and wastes) in releases requiring fund expenditures for each of these three classes;

(B) the fee rate for each primary petrochemical, inorganic raw material, and crude oil subject to the fee is approximately proportional to its (including intermediates, final products and waste) incidence, as estimated from available information, in releases requiring fund expenditures.

(2) In modifying the fee rate pursuant to paragraph (1)(B) of this subsection:

(A) If in the first three years a substance (its intermediates, final products, or wastes) has not been found in any releases requiring fund expenditures, the fee for that substance shall be set at the lowest rate applicable to any substance subject to the fee and that rate shall apply until the next biannual adjustment.

(B) If by the second biannual fee adjustment or any subsequent biannual fee adjustment, a substance (its intermediates, final products, and wastes) has not been found in any releases requiring fund expenditures, the fee for that substance may be set at zero, except that, if expenditures from the fund are subse-

quently required for a substance with a fee rate of zero, the Secretary may, by rule, reimpose a fee in the next annual fee collection period.

(C) The Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, may, where appropriate, distinguish among industrial categories to better approximate the expenditure experience of the Fund. If it is concluded that (i) a particular industrial category and its suppliers have not caused or contributed significantly to releases of such substances requiring Fund expenditures; (ii) substances typical of those used by the industrial category or its suppliers have not been present significantly in releases of unknown origin from any facility or site where hazardous substances are stored or disposed and which have resulted in fund expenditures; and (iii) distinguishing among industrial categories would not preclude passing the fee on to ultimate consumers of hazardous substances present in releases, then such industrial category shall not be subject to a fee on the particular primary petrochemical, inorganic raw material or crude oil.

(3) Prior to the first adjustment of fee rates provided for in paragraph (1)(B) of this subsection, the fertilizer production industry is conclusively presumed to not impose signifi-

cant costs upon the Fund and to be subject to a fee rate of zero. In implementing such paragraph, the Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, shall determine whether such fee rate requires adjustment to reflect the Fund's actual expenditure experience.

(4) Prior to the first adjustment of fee rates provided for in paragraph (1)(B) of this subsection, the fee on copper shall be imposed only on copper sulfate, cupric oxide, and cuprous oxide. In implementing this section, the Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, shall determine, pursuant to paragraph (1)(B) of this subsection, whether a fee should be imposed by rule on copper or additional copper compounds to reflect the Fund's actual expenditure experience. Copper which is exported shall be exempt from any fee.

(f)(1) In order to provide suppliers an economic incentive for the recycling and reuse of primary petrochemicals and inorganic raw materials, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, may by rule reduce the fee which would otherwise be imposed under this section in proportion to the extent that the Secretary determines any portion of that primary petrochemical or inorganic raw material to be——

(A) removed from the waste stream of a production process and recycled in such production process; reintroduced into the production of substances subject to the fee; or used as a source of fuel or other energy when used onsite or sold to other persons;

(B) derived from recycled material; or

(C) produced solely as a byproduct of pollution controls and used onsite or sold to other persons.

(2) No reduction in fees under paragraph (1) of this subsection may exceed the amount of the fee which would otherwise be imposed under this section on the sale or use of such primary petrochemical or inorganic raw material.

(g) Any fees imposed by subsection (c) shall be assessed and collected by the Secretary of the Treasury or his delegate, and the provisions of subtitle F of the Internal Revenue Code of 1954 shall apply to the assessment and collection of such fee as if such fee were a tax described in chapter 32 of such Code.

~~(d)~~*(h)*(1) The President shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund. *In any fiscal year, two-thirds of the money credited to the Fund as provided in subsection (b) (2) and (3) shall be available only for—*

(A) costs of removal as provided under section 6(a)(1) (A), (B), (C), and (G);

(B) all other costs as provided for under section 6(a)(1) (C), (D), (E), (F), (H), (I), (J), (L), and (P); and

(C) that portion of administrative and personnel costs under section 6(a)(1)(K) which are incident to the costs in subparagraphs (A) and (B) of this paragraph.

(2) The Secretary of the Treasury may invest any excess in the Fund, ~~above the level determined under paragraph (1),~~ in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(3) The Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, may use any excess in the Fund to purchase private reinsurance. Any such reinsurance shall be for the sole purpose of increasing the ability of the Fund to meet potential obligations as provided in section 6. Any contract to purchase such reinsurance made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a

determination by the Secretary that advertising is not reasonably practicable.

(i)(1) Moneys recovered, collected, transferred, or loaned which are referred to in subsection (b)(1) and in paragraph (2) of this subsection, shall, as necessary, increase the moneys in the Fund provided by subsection (b) (2) and (3) to the extent necessary to meet the potential obligations of the Fund as determined by the President. All moneys credited to the Fund in any fiscal year shall remain available until expended.

~~(c)~~*(2)* If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the President shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of these notes or obligations shall be made by the President from moneys in the Fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any note or other obligations issued hereunder and, for that purpose, is authorized to use as a public debt transaction the proceeds from the sale of any securities issued

under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States. The authority of the President to issue notes or other obligations under this subsection shall be subject to such amounts as are provided in appropriation Acts.

(3) In any one fiscal year, any notes or other obligations authorized to be issued under paragraph (2) of this subsection shall not exceed in amount the total of fees and appropriations authorized by subsection (b) (2) and (3) of this section for the subsequent fiscal year. Except as necessary to provide the costs of removal in the first two years after imposition of a fee under this section or to provide the costs of removal for one or more unanticipated catastrophic releases, the proceeds of any notes or obligations issued pursuant to paragraph (2) of this subsection shall not be used for the purposes identified in subsection (h)(1) (A), (B), and (C).

~~(f) The Administrator of the Environmental Protection Agency, the Commandant of the Coast Guard, and the Comptroller General shall undertake a study of possible in-~~

~~centives to safer operation of vessels and facilities to reduce the potential of discharges or releases of hazardous substances, and generally of measures to prevent or avoid the occurrence of such discharges or releases. Such study shall address (1) the feasibility of a variable fee for replenishment of the Fund under subsection (c) of this section which takes into account the likelihood of a discharge or release and the operational experience of individuals or classes, and (2) whether current practices in the insurance and banking industries provide any incentives or disincentives to reducing the potential for discharges or releases of hazardous substances. Such study shall be conducted in consultation with other appropriate Federal and State agencies, the affected industries, and other interested parties. A first report of such study, together with legislative recommendations, if any, shall be submitted to the Congress not later than one year after enactment of this Act and as appropriate thereafter.~~

(j) Within four years after the fee is first initiated, the Administrator of the Environmental Protection Agency, after consultation with the Secretary of the Treasury and the Secretary of Transportation, shall submit a report on the fee system to the Congress. Opportunity shall be provided for public review and comment. The report shall make recommendations on any statutory changes which would further assure that, to the extent practicable, the burden of the fee

system is on those substances and parties who create the problem addressed by this Act and that the costs of the fees are distributed as broadly as possible through the economy. Such recommendations should also address changes which would reduce administrative and reporting burdens. The report shall consider the feasibility of a variable fee which takes into account the likelihood of a discharge or release and the operational experience of classes so that incentives to proper handling and distincentives to improper or illegal handling or disposal of hazardous substances are maximized. In addition, the report shall provide the following information: (1) a summary of past disbursements from the Fund; (2) a projection of any future funding needs remaining after expiration of authority to impose fees and of the threat to public health, welfare and the environment posed by the releases creating such needs; (3) the record and experience of the Fund in recovering Fund disbursements from liable parties; and (4) the record of State participation in response and compensation.

(k)(1) There is hereby established in the Treasury of the United States a Post-closure Liability Fund, not to exceed $200,000,000. Such fund shall be administered by the President and the Secretary of the Treasury, as specified in this section.

(2) Beginning six months after the enactment of this Act, the Secretary of the Treasury shall collect from the owner or operator of each hazardous waste disposal facility which has received a permit or is accorded interim status under subtitle C of the Solid Waste Disposal Act, a fee on each unit of hazardous waste received at such facility, which will remain at such facility after such facility is closed in accordance with the requirements of such subtitle C. Such fee may reflect the relative hazard, including persistence of hazard, of such hazardous wastes, as determined in the discretion of the Administrator of the Environmental Protection Agency. For wastes of large volume and relatively low hazard, such fee shall reflect the relative hazard. Such fee shall initially be established at levels adequate to provide a fund of $200,000,000 five years after collection of such fee begins.

(3) Subsections (c)(2)(B), (g), (h)(2), and (i)(2) of this section shall apply to the Post-closure Liability Fund.

(4) Any modification of the fee under this subsection shall be designed to assure that the Post-closure Liability Fund is maintained at a level adequate to meet potential obligations, and not less than $100,000,000 nor, taking into account imminent obligational requirements, more than $200,000,000.

(5) Not later than three years after enactment of this Act, the President shall, after opportunity for public comment and consultation with States and affected private interests, submit recommendations to the Congress on any further legislation or amendments which may be necessary to assure that risk to public health and welfare and the environment from closed waste disposal facilities is minimized. Recommendations shall include, but not be limited to, the adequacy of the size of the Fund established by this subsection; and the appropriate division of responsibility among the Fund, State and local governments, and owners and operators of facilities for care of such facilities in perpetuity.

(6) The President shall appoint an advisory committee of State and local officials and owners or operators of facilities from which the fee provided in paragraph (2) of this subsection is collected, to observe and report to the President and the Congress on the administration of the Post-closure Liability Fund and the appropriateness of disbursements from such fund.

(l) For the purposes of this section, the term—

(1) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit;

(2) "primary petrochemical" means only the following: acetylene; benzene; butane; butylene excluding that portion used to make butadiene; butadiene; ethyl-

ene; methane excluding that portion used to make ammonia and acetylene; naphthalene; propylene; toluene excluding that portion used to make benzene; and xylene.

(3) "inorganic raw material" means only the following:

(A) antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide; arsenic and the equivalent weight of arsenic in arsenic trioxide; the equivalent weight of barium in barium sulfide; cadmium; chromium and the equivalent weight of chromium in chromite and potassium dichromate and sodium dichromate; cobalt; copper (except as provided in subsection (e)(4) of this section); lead and the equivalent weight of lead in lead oxide; mercury; nickel; the equivalent weight of tin in stannic chloride and stannous chloride; zinc and the equivalent weight of zinc in zinc oxide;

(B) chlorine; bromine; and the equivalent weight of fluorine in hydrogen fluoride;

(C) phosphoric acid; sulfuric acid; hydrochloric acid; nitric acid; potassium hydroxide; and sodium hydroxide in hydrogen fluoride;

(D) elemental phosphorous; and

(E) ammonia excluding that portion used to make nitric acid;

(4) "refinery" means a permanently situated facility, located in the United States, which receives crude petroleum oil for the purpose of refinement;

(5) "supplier" means any person who produces, manufactures, or imports primary petrochemicals or inorganic raw materials and either provides, through sale or any other means, such primary petrochemicals or inorganic raw materials to other persons, or uses such primary petrochemicals and inorganic raw materials himself; and

(6) "petroleum oil" means petroleum, including crude petroleum or any fraction or residue therefrom, other than carbon black.

USE OF RESPONSE FUND

SEC. 6. (a)(1) The President shall use the money in the Fund for the following purposes:

(A) payment of any claim for costs of removal or damages *under section 4(a)(2) (C), (E), or (F)* where the source of the discharge or release of a hazardous substance, or a person liable for such costs of removal or damages, is not known or cannot be identified;

(B) payment of any claim for costs of removal or damages *under section 4(a)(2) (C), (E), or (F)* in any

case where the claim has not been satisfied in accordance with subsection (b) of this section;

(C) all removal costs or expenses, costs of ~~containment or emergency response,~~ *remedial action*, or other costs of carrying out the national contingency plan established under section 311(c) of the Clean Water Act or as amended under section 3 of this Act, including removal costs incurred by any person and approved under such national contingency plan;

(D) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, *and needed to supplement equipment and services available through contractors or other non-Federal entities*, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under such national contingency plan;

(E) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge or release of a hazardous substance;

(F) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the

equivalent of any natural resources injured, destroyed, or lost as a result of any discharge or release of a hazardous substance;

(G) reimbursement to any State for the payment of any claims for costs of removal or damages *under section 4(a)(2) (C), (E), or (F)* payable under this Act which such State has paid with funds under the control of such State pursuant to the national contingency plan ~~or to a delegation~~ *and a contract* under subsection (b) of this section;

(H) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against ~~hazardous substance disposal sites;~~ *releases, discharges, and disposal of hazardous substances;*

(I) subject to such amounts as are provided in appropriation Acts, not to exceed $10,000,000 per fiscal year, the costs of research related to the purposes of this Act and section 311 of the ~~Federal~~ *Clean* Water ~~Pollution Control~~ Act, to be performed by Federal agencies including the Environmental Protection Agency, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration. Such research shall include, but not be limited to (i) develop-

ment and refinement of protocols to determine the type and extent of short and long term injury or loss of natural resources, (ii) development and refinement of the best available procedures to identify the value of injured or lost *natural* resources, (iii) laboratory or field research on the effects of hazardous substances on living and nonliving resources that will provide additional scientific basis for damage assessments, and (iv) research on minimizing the damage caused by spill control, dispersal, *remedial action*, and removal operations. Responsibility under the preceding sentence shall be assigned in accordance with the assessment responsibilities established under subsection (e)(2) of this section and officials responsible for such assessments shall be consulted before proposal of any research plan or appropriation request under the preceding sentence;

(J) subject to such amounts as are provided in appropriation Acts, the costs of research to develop mobile or portable onsite technology for response at ~~hazardous substance disposal sites,~~ *facilities or sites at which hazardous substances are present*, technology for onsite treatment, or ~~containment~~ *remedy* of releases into groundwater, or other technology for the containment, treatment, or secure disposition of hazardous substances;

(K) subject to such amounts as are provided in appropriation Acts, the administrative and personnel costs of administering the Fund and this ~~Act.~~ *Act;*

(L) the costs of epidemiologic studies, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances are suffering from long-latency diseases;

(M) the reasonable costs of expert witnesses employed by claimants in actions to recover damages under section 4 of this Act, to the extent authorized by the court, and the costs of neutral expert panels which may be established in such actions by the court, sua sponte or on the motion of any party;

(N) payment of any claim for any capital loss or loss of income by an agricultural producer or processor due to destruction or loss of value of any livestock products, any poultry or eggs, any agricultural commodities (including grain, feed, or produce), or any orchard or cropland, forestland, rangeland, or pastureland taken out of production, where such destruction or loss of value results from condemnation or restriction on use determined by a public health agency to be nec-

essary because of contamination resulting from a release of a hazardous substance, or where such destruction or injury results directly from a release of a hazardous substance, and such release occurs or has occurred after January 1, 1974;

(O) payment of any claim for any capital loss or loss of income by a harvester or processor of fish or seafood due to destruction or loss of value of any fishery stock, any harvested fish or seafood, or any fish or seafood product, where such destruction or loss of value results from condemnation or restriction on use determined by a public health agency to be necessary because of contamination resulting from a release of a hazardous substance, or where such destruction or injury results directly from a release of a hazardous substance, and such release occurs or has occurred after January 1, 1978;

(P) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance discharges, releases, or disposals. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include,

but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(2)(A) The President shall not use any money in the Fund for ~~any removal~~ *the* costs *of any remedial action* associated with a discharge, release, *or disposal* of a hazardous substance ~~from a hazardous waste disposal site not in compliance with a permit under subtitle C of the Solid Waste Disposal Act, other than the costs of emergency response,~~ unless the State in which the *facility or* site is located first provides adequate assurance that (i) such State will use such money to provide for or otherwise assure any and all future maintenance of ~~containment measures~~ *removal and remedial actions* for the expected life of ~~the containment,~~ *such actions*, (ii) such State will assure the availability of a hazardous waste disposal facility acceptable to the Administrator *and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act* for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances, (iii) such State will bear 10 per centum of such costs of ~~removal;~~ *remedial action;* ~~and~~ (iv) the Fund will recover at least 50 per centum or such greater amount as the

President shall determine appropriate, *taking into account the degree of culpability and financial capability of the State or political subdivision,* of any sums expended on ~~containment~~ *removal or remedial action* at a hazardous substance disposal *facility or* site owned at the time of any disposal by a State or a political subdivision of a State*; and (v) such State will assure that adequate measures will be taken or provided to protect the health and safety of State employees and of employees of contractors and subcontractors engaged in removal, remedy, and other response activities covered by this Act in accordance with the program for health and safety protection of employees under paragraph (1)(P) of this subsection. The President shall reduce the State share under clause (iii) of this subparagraph by the amount of documented direct out-of-pocket costs of removal and claims for damages payable under section 4(a)(2) (C), (E), and (F) of this Act which such State or a political subdivision thereof has paid with non-Federal funds since January 1, 1978, and before the enactment of this Act. Nothing in this section shall prevent a State or political subdivision thereof from bringing an action to recover from any person who is liable, pursuant to any law, any sums expended by a State or its political subdivision pursuant to this subsection.*

(B) The President, *after consultation with State and local governments* shall identify *and publish*—

(i) ~~national priorities for response based on methods and criteria for determining such response priorities, including the role of the States in determining State priorities for response, and in assisting the President in the determination of national priorities for response,~~ *criteria for determining priorities among releases or threatened releases throughout the United States (aa) for the purpose of taking remedial action, and (bb) to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. In establishing such criteria, the President shall consult, as appropriate, with affected private interests, including exposed populations. A list identifying priorities among known disposal facilities or sites or other releases for the purpose of taking remedial action shall be published not later than ninety days after the date of enactment of this Act and shall be revised at least annually thereafter. Criteria and priorities under this clause shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President,* taking into account, to the extent possible, ~~the significance of the threat to public health, safety, and the environment;~~ the population at risk; the hazard potential of the hazardous substances at such *facilities or* sites;

the potential for contamination of drinking water supplies; the potential for direct human contact; the potential for destruction of sensitive ecosystems; State preparedness to assume State costs and responsibilities; and other appropriate ~~factors; and~~ *factors. In establishing national priorities the President shall consider any priorities established by the States under subparagraph (C) of this paragraph;*

(ii) a system, including the use of contracts, whereby the State or States affected by a discharge or release of hazardous substances ~~from a hazardous waste disposal site~~ may act where necessary to provide ~~emergency response and containment~~ *removal and remedial action in accordance with the priorities established under clause (i)* and may be reimbursed for the reasonable costs incurred for such ~~response and containment~~ *measures* from the Fund.

(C) Within twelve months after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President, priorities for remedial action among releases and potential releases in that State which present, or may present, a substantial threat to public health or the environment. Such priorities shall be established in accordance with the criteria published under clause (i) of subparagraph (B) and consistent with the Na-

tional Contingency Plan as revised under section 3(c) of this Act.

(3)(A) Payment of any claim for out-of-pocket medical expenses under this section shall be limited to those incurred from the time of initial exposure to a hazardous substance in a discharge, release, or disposal, until six years following discovery of such exposure.

(B) Except as provided in paragraph (1)(N) and (O) of this subsection, payment of any claim for calculable direct lost wages or other personal income under section 4(a)(2)(E) of this Act shall be limited to 100 per centum of the actual net amount lost in the first year following the commencement of such loss and 80 per centum of the actual amount lost in the second year following the commencement of such loss.

(4) Except as provided in paragraph (1)(N) and (O) of this subsection, the fund shall not be used for the payment of any claims for damages under section 4(a)(2) (A), (B), (D), (E), (F), or (G) resulting from the field application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act.

(5)(A) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the

total claims outstanding at any time exceed the current balance of the Fund, the President may, in his discretion, defer payment of all claims or of any class of claims, make partial payment on a prorated basis to each affected claimant, or provide for the payment of claims on a priority basis determined under regulation as to relative hardship to claimants.

(B) Paragraph (1)(C), (E), (F), (L), and (M) of this subsection shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(b)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a ~~cooperative agreement~~ *contract* with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for costs of

removal or damages resulting from the discharge or release of a hazardous substance under this Act.

(B) Whenever the President receives information from any person alleging they have incurred costs of removal or damages resulting from the discharge or release of a hazardous substance for which the owner or operator of a vessel or ~~onshore or offshore~~ facility is liable under section 4 of this Act, he shall notify the owner, operator, and guarantor of such vessel or ~~onshore or offshore~~ facility of such allegation. Such owner or operator or guarantor may, within ~~five~~ *fifteen* days after receiving such notification or presentation of any claim by a claimant, deny such allegations, or deny liability for damages for any of the reasons set forth in subsection (a) of section 4 of this Act.

(C) The owner and operator of any vessel or ~~onshore or offshore~~ facility from which a hazardous substance has been discharged or released shall provide notice to all potential injured parties.

(D) All claims shall be presented in the first instance to the owner, operator, or guarantor of the vessel, or ~~onshore or offshore~~ facility from which a hazardous substance has been discharged or released, and to any other person liable under section 4. In any case where the claim has not been satisfied in accordance with this paragraph, the claimant may elect to commence an action in court against such owner, operator,

or guarantor or other person or to present the claim for payment from the fund under this section.

(E) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under this paragraph or subsection (c) of this section only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty or other evidence of financial responsibility furnished under section 7 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: Provided, That this subsection shall not alter the liability of any person under section 4 of this Act.

(F) The Fund administrator shall promptly review each claim application and enter an order which shall, within ninety days of application, either certify or deny certification as to the injury of the applicant. In making the determination, the Fund administrator may require any medical tests or examinations of the claimant as deemed necessary to confirm the diagnosis or determination of the injury. The Fund administrator may similarly require documentation, verification, and authentication of the amount of any claim for benefits.

(G) Any injured party who has filed a timely claim shall be entitled to benefits (by way of payment or reimbursement) for all medical costs pursuant to section 4(a)(2)(F)

associated with the injury for which certification has been made by the Fund administrator. Such benefit shall be paid within sixty days of certification: Provided, however, That no award for medical benefits other than for diagnostic services shall be made unless the injured party's medical expenses shall have been or will be at least $300.

(H)(i) Except as provided in clause (ii) of this subparagraph, the President shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5) upon a determination by the President that advertising is not reasonably practicable. The President shall establish procedures under subparagraph (A) of this paragraph for the approval and payment of claims. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the President.

(ii) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or

State agencies are inadequate, the President may use Federal personnel to process claims against the Fund.

(iii) Without regard to subsection (b) of section 556 of title 5, United States Code, the President is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more individuals or, in the discretion of the President, panels, each comprised of three individuals, to hear and decide disputes regarding certifications, denials, or benefits which are filed by claimants. Such individuals or panel members may be appointed from the private sector or from any Federal agency except the staff administering the Fund. Each individual or panel member appointed from the private sector shall receive a per diem compensation, and each individual or panel member shall receive necessary travel and other expenses while engaged in work under this clause. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to individuals or panel members appointed from the private sector.

~~(E)~~ *(I)* No claim may be presented nor may an action be commenced for damages under this Act unless that claim is presented or action commenced within ~~six~~ *three* years from the date of the discovery of the loss *or the date of enactment of this Act, whichever is later.*

(J) The remedies in this Act shall be deemed to be cumulative and not exclusive. Nothing in this Act shall require or be deemed to require pursuit of any claim against the Fund as a condition precedent to any other remedy.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the costs of removal or damages from the person responsible or liable for such discharge, ~~or~~ release, *or disposal.*

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs of removal resulting from a discharge ~~or~~ release, *or disposal* of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal such claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and, without regard to ~~only~~ *any* limitation of liability, all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the com-

pensated claimant or to the Fund, for the damages or costs of removal for which the compensation was paid.

(d) The Fund shall not be available to pay any claim for costs of removal or damages to the extent the discharge or release or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(e)(1)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Director of the Fish and Wildlife Service, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge or release of a hazardous substance, for the purpose of section 4(a)(2) (C) and (D) of this Act, section 6(a)(1)(F) of this Act, and section 311(f) (4) and (5) of the Clean Water Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such dam-

ages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(2) In accordance with such regulations, damages for injury to, destruction of, or loss of natural resources resulting from a discharge, ~~or~~ release, *or disposal* of a hazardous substance, for the purposes of section 4(a)(2) (C) and (D) and section 6(a)(1)(F) of this Act and section 311(f) (4) and (5) of the Clean Water Act, shall be assessed by (A) the Director of the Fish and Wildlife Service for living natural resources and their supporting ecosystems over which such Service has management or conservation authority, (B) the Administrator of the National Oceanic and Atmospheric Administration for other natural resources in the marine environment beyond the baseline of the territorial sea, and (C) the Administrator of the Environmental Protection Agency for all other natural resources. Such officials shall act for the President as trustee under section 4(b) of this Act and section 311(f)(5) of the Clean Water Act.

(3) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of section 4(a)(2) (C) and (D) and section 6(a)(1)(F)

of this Act and section 311(f) (4) and (5) of the Clean Water Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 4(b) of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the ~~Federal~~ *Clean* Water ~~Pollution Control~~ Act.

(f) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under section 4(b) of this Act or subsection (a)(1)(F) of this section for the restoration, rehabilitation, or replacement or aquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

(g) In the case of any discharge, release, or disposal in which the President has not taken action under section 3(c) of this Act, the United States Government shall not seek damages under this Act or bring an action to recover damages under this Act unless the discharge, release, or disposal pre-

sented a substantial danger to public health or welfare or caused a significant amount of damages.

~~(f)~~ *(h)* The ~~Comptroller General~~ *Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated* shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. ~~The Comptroller~~ *Each such Inspector* General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. ~~The Comptroller~~ *Each such Inspector* General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the ~~Comptroller~~ *Inspector* General in carrying out this subsection.

(i) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a)(1) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 4(j) of this Act, and, in addition, for payment of any claim or appropriate request for costs of removal, damages, or other compensation for injury or loss under section 4 of this Act or any other State or Federal law,

resulting from a release of a hazardous substance from such a facility.

(j) No grant or contract for removal, remedy, remedial action, or other response to a discharge release, or disposal of a hazardous substance under this Act shall be made unless the President finds that the grant or contract contains or is supported by reasonable assurance that all laborers and mechanics employed by grantees, contractors or subcontractors on projects of the type covered by the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with that Act; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. 133z–5) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

FINANCIAL RESPONSIBILITY

SEC. 7. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry hazardous substances as cargo) using any port or place in the United States or the navigable waters or any offshore facility shall establish and maintain in accordance with section 311(p) of the ~~Federal~~ *Clean* Water ~~Pollu-~~

~~tion Control~~ Act evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances *(other than as defined in section 2(b)(13)(G) of this Act)* as cargo, or $5,000,000, whichever is greater). The provisions of paragraphs (3), (4), (5), and (6) of such section 311(p) shall apply to any vessel, or the owner or operator thereof, subject to this section. This subsection shall take effect one hundred and eighty days after the enactment of this Act.

(2) Any vessel subject to the requirement of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any hazardous substances carried as cargo.

~~(b)(1) The owner or operator of any onshore or offshore facility shall establish and maintain evidence of financial responsibility consistent with the degree and duration of risks associated with the transportation, treatment, storage, or disposal of hazardous substances. Such evidence of financial responsibility shall be established according to regulations prescribed by the President and comparable to that required under section 311(p) of the Federal Water Pollution Control Act. This subsection shall take effect one hundred and eighty days after enactment of this Act.~~

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate

requirements (in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) Financial responsibility requirements shall be in addition to those of existing law and for rolling stock comparable to those required for vessels under subsection (a) of this section. The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, court settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of no less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

~~(2)~~*(4)* The owner or operator of any facility subject to this subsection who fails to comply with this subsection or the regulations prescribed thereunder shall be subject to a fine of not more than $10,000 per day of violation.

STATE LAWS AND PROGRAMS

SEC. 8. *(a)* Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the discharge, *release, or disposal* of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages as provided in this Act.

LITIGATION AND CONFORMING AMENDMENTS

SEC. 9. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages.

(b) Except as provided in subsection (a) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or release or damages occurred, or in which the defendant resides, may be found, or does business.

(c) No provision of this Act shall be deemed or held to moot any litigation concerning any discharge, release, or disposal of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(d) Section 311 of the Clean Water Act is amended as follows:

(1) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section"

the words "or the fund established under section 5 of the Environmental Emergency Response Act, as appropriate,".

(2) Subsection (f) is amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against any guarantor of an owner's or operator's liability under the Environmental Emergency Response Act,".

(3) Subsection (g) is amended, by inserting in the last sentence, after the word "party" the words "or against any guarantor of an owner's or operator's liability under the Environmental Emergency Response Act".

(4) One half of any sums appropriated prior to the enactment of this Act under subsection (k) of such section 311 and all sums appropriated under section 504(b) of the Clean Water Act shall be transferred to the Fund established under section 5 of this Act.

(e) In any case in which any provision of section 311 of the Clean Water Act is determined to be in conflict with any provisions of this Act, the provisions of this Act shall apply.

EMPLOYEE PROTECTION

SEC. 10. (a) No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated

against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filled or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such viola-

tion did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) This section shall have no application to any employee who, acting without discretion from his employer (or his agent) deliberately violates any requirement of this Act.

(e) The President shall conduct continuing evaluations of potential loss or shifts of employment which may result

from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter. The President shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearing require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings and recommendations shall be available to the public. Nothing in this subsection shall be con-

strued to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

EXPIRATION

SEC. ~~10.~~ *11. (a)* The authority to establish and collect fees pursuant to section 5 of this Act and the authority to obligate funds pursuant to section 6 of this Act, *other than for the Postclosure Liability Fund,* shall expire October 1, 1986.

(b) Any expenditure under section 6 of this Act, other than those involving the balance of the contingency fund established under section 311(k) of the Clean Water Act and transferred to the Fund under section 9(d)(4) of this Act, shall be made after October 1, 1980, for any claim arising before such date.

SEPARABILITY

SEC. 12. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

[From the Congressional Record, Nov. 20, 1980, pp. S14750-S14752, S14767-S14768]

SENATE DEBATE ON S. 1480

ENVIRONMENTAL EMERGENCY RESPONSE ACT

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, may I say, before I proceed to the unanimous-consent request, it is the desire of the leadership on this side of the aisle to proceed to the consideration of the superfund bill, the Senate version.

The PRESIDING OFFICER. Let us have quiet in the Chamber, this may involve a ruling of the Chair.

Mr. ROBERT C. BYRD. I should say to the distinguished minority leader and others on the other side of the aisle that it would be my hope that we could proceed with the consideration of the Senate bill.

It is my understanding that Mr. STAFFORD and Mr. RANDOLPH have worked out an amendment by way of a substitute, perhaps, to the Senate bill which might represent a pretty fair consensus of the Senate.

It would also be my hope that if Senators wish to have a little time to further negotiate the Stafford-Randolph proposal, if we could get to the superfund bill, we might then set it aside, hopefully, and proceed to other matters while those considerations are being carried on.

So, having said that, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1151, S. 1480.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object. Mr. President, I am reserving the right to object.

The PRESIDING OFFICER. Let us have quiet in the Chamber. The Chair is not familiar with the situation except to understand that it may require a ruling.

Mr. BAKER. Mr. President, I thank the Chair.

Mr. President, may I say on reservation that the majority leader has conferred with me in advance of this, for which I am grateful. He is aware from that private conversation, which I repeat now, that I had hoped we could work out a satisfactory arrangement to permit us to pass a superfund bill this session.

Now, that statement is at variance with what I have said publicly before. I had said I thought there was no chance a superfund bill could pass this session. But, frankly, I changed my mind, and I was urged by many on this side to try, and I have tried to do so.

We have had a number of meetings. Indeed, there was a meeting scheduled for 3 o'clock this afternoon with a number of parties who are interested in this subject, including the distinguished Senator from Vermont (Mr. STAFFORD), the distinguished Senator from New Mexico (Mr. DOMENICI), the distinguished soon-to-be chairman of the Finance Committee (Mr. DOLE), and a number of others.

I had hoped we could work out something.

I do not think, in all candor, that the Randolph-Stafford bill is a compromise in the sense that it would permit us to proceed at this time to the consideration of this measure.

I do think there is still a chance, I suppose, that that could be worked out, but not in the face of an effort to proceed immediately to the consideration of this measure. I simply do not believe such action could be the basis of negotiations.

Mr. President, having said that, I express my regret that we apparently are at an impasse on this subject, and therefore I object to the request of the majority leader.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I understand the position of the distinguished minority leader. Again I say that I hope the Senate will proceed to the bill. Then, if additional time is needed, which apparently the distinguished minority leader would like to have, I would hope that we could set the bill aside then and proceed to something else in the meantime.

Therefore, Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1151, S. 1480, and I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

CALL OF THE ROLL

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. BAKER. Mr. President, I object to the request.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued and concluded the call of the roll and the following Senators answered to their names:

[Quorum No. 33 Leg.]

Baker	Hart	Riegle
Bradley	Heflin	Sarbanes
Byrd, Robert C.	Helms	Stennis
Cranston	McClure	Thurmond
Goldwater	Randolph	Warner

The PRESIDING OFFICER. A quorum is not present.

The clerk will call the roll of absent Senators.

Mr. CRANSTON. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators.

Mr. HELMS. I ask for the yeas and nays.

Mr. BAKER. I ask for the yeas and nays.

The PRESIDING OFFICER. The Chair sees only three Senators in the Chamber.

Mr. BAKER. Mr. President, I hope the clerk will continue the call of the roll of absent Senators while others are brought to respond to the request for the yeas and nays.

The PRESIDING OFFICER. What is the Senator's request?

Mr. BAKER. Mr. President, I request that the clerk continue the call of the roll to determine the presence of a quorum, prior to ruling on the request for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, has the absence of a quorum been established?

Mr. CRANSTON. Mr. President, I repeat my request for the yeas and nays.

The PRESIDING OFFICER. The Chair stands corrected. The Parliamentarian advises that three Senators are sufficient to second the request for the yeas and nays. If that is the rule, it will be followed.

That brings us now to the question of the motion to instruct the Sergeant at Arms to require the attendance of absent Senators. On this question the yeas and nays have been requested and are ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Ohio (Mr. METZENBAUM), the Senator from Wisconsin (Mr. NELSON), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), the Senator from Utah (Mr. HATCH), the Senator from California (Mr. HAYAKAWA), the Senator from New York (Mr. JAVITS), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

The PRESIDING OFFICER (Mr. HEFLIN). Are there any other Senators wishing to vote?

The result was announced—yeas 75, nays 5, as follows:

[Rollcall Vote No. 476 Leg.]

YEAS—75

Armstrong	Cochran	Helms
Baker	Cohen	Hollings
Baucus	Cranston	Huddleston
Bayh	Danforth	Humphrey
Bellmon	DeConcini	Jackson
Bentsen	Dole	Jepsen
Biden	Domenici	Johnston
Boren	Eagleton	Kassebaum
Boschwitz	Exon	Leahy
Bradley	Ford	Levin
Bumpers	Garn	Lugar
Byrd, Harry F., Jr.	Glenn	Matsunaga
Byrd, Robert C.	Hart	McClure
Chafee	Hatfield	Melcher
Chiles	Heflin	Mitchell
	Heinz	Morgan

Moynihan	Sarbanes	Talmadge
Nunn	Sasser	Thurmond
Packwood	Schmitt	Tsongas
Pell	Schweiker	Wallop
Percy	Simpson	Warner
Pryor	Stafford	Williams
Randolph	Stennis	Young
Ribicoff	Stevens	Zorinsky
Riegle	Stewart	
Roth	Stone	

NAYS—5

Goldwater	Proxmire	Weicker
Long	Tower	

NOT VOTING—20

Burdick	Hatch	Mathias
Cannon	Hayakawa	McGovern
Church	Inouye	Metzenbaum
Culver	Javits	Nelson
Durenberger	Kennedy	Pressler
Durkin	Laxalt	Stevenson
Gravel	Magnuson	

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the motion to proceed.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators answered to their names.

[Quorum No. 34 Leg.]

Armstrong	Ford	Mitchell
Baker	Garn	Morgan
Baucus	Glenn	Moynihan
Bayh	Goldwater	Nelson
Bellmon	Gravel	Nunn
Bentsen	Hart	Packwood
Biden	Hatfield	Pell
Boren	Heflin	Percy
Boschwitz	Heinz	Proxmire
Bradley	Helms	Pryor
Byrd, Harry F., Jr.	Hollings	Randolph
	Humphrey	Ribicoff
Byrd, Robert C.	Jackson	Riegle
Chafee	Jepsen	Roth
Chiles	Johnston	Sarbanes
Cochran	Kassebaum	Sasser
Cohen	Kennedy	Schmitt
Cranston	Leahy	Schweiker
Culver	Levin	Simpson
Danforth	Long	Stafford
DeConcini	Lugar	Stennis
Dole	Matsunaga	Stevens
Domenici	McClure	Stevenson
Eagleton	Melcher	Stewart
Exon	Metzenbaum	Stone

Talmadge	Wallop	Young
Thurmond	Warner	Zorinsky
Tower	Weicker	
Tsongas	Williams	

The PRESIDING OFFICER. A quorum is present.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I move to lay on the table the motion to proceed and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), the Senator from Utah (Mr. HATCH), the Senator from California (Mr. HAYAKAWA), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), the Senator from Oregon (Mr. PACKWOOD), and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 29, nays 50, as follows:

[Rollcall Vote No. 477 Leg.]

YEAS—29

Armstrong	Gravel	Schweiker
Baker	Heflin	Simpson
Bellmon	Helms	Stevens
Boschwitz	Humphrey	Thurmond
Cochran	Kassebaum	Tower
Danforth	Lugar	Wallop
Dole	McClure	Warner
Domenici	Percy	Young
Garn	Roth	Zorinsky
Goldwater	Schmitt	

NAYS—50

Baucus	Bradley	Chafee
Bentsen	Byrd,	Chiles
Biden	Harry F., Jr.	Cohen
Boren	Byrd, Robert C.	Cranston

Culver	Leahy	Randolph
DeConcini	Levin	Ribicoff
Eagleton	Long	Riegle
Exon	Matsunaga	Sarbanes
Ford	Melcher	Sasser
Glenn	Metzenbaum	Stafford
Hart	Mitchell	Stevenson
Hatfield	Moynihan	Stewart
Heinz	Nelson	Stone
Hollings	Nunn	Talmadge
Jackson	Pell	Tsongas
Johnston	Proxmire	Weicker
Kennedy	Pryor	Williams

NOT VOTING—21

Bayh	Hatch	Magnuson
Bumpers	Hayakawa	Mathias
Burdick	Huddleston	McGovern
Cannon	Inouye	Morgan
Church	Javits	Packwood
Durenberger	Jepsen	Pressler
Durkin	Laxalt	Stennis

So the motion to lay on the table the motion to proceed to the consideration of S. 1480 was rejected.

Mr. ROBERT C. BYRD. Mr. President, there is a desire and a need on the part of Senators on both sides of the question and on both sides of the aisle to have some discussion and, perhaps, to negotiate some differences with respect to this bill. In addition to that fact, Mr. HOLLINGS wishes to bring up the conference report on the budget resolution. After conferring with Mr. BAKER and other Senators, I am constrained to ask unanimous consent that further action on the pending motion be delayed until 4 p.m. today.

Mr. BAKER. Mr. President, reserving the right to object, I will not object, the purpose of the reservation is to say that I think that is a good arrangement. That leaves the parties in status quo. The motion to proceed has not yet been disposed of. There is time now for the parties to resume the meetings planned earlier, to see if there is a possibility of working out a bill.

I repeat once more, I would like to see us pass a bill if we can work out the details of it, and do it in this session.

With the request just made by the majority leader, I am willing to resume those negotiations, and I have no objection.

Mr. HELMS. Mr. President, reserving the right to object, I simply want to thank the distinguished majority leader for his consideration.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS FOR 30 MINUTES

The PRESIDING OFFICER. Pursuant to the previous order, the Senate now stands in recess for 30 minutes.

Thereupon, at 3:06 p.m., the Senate recessed for 30 minutes; whereupon, at 3:36 p.m., it reassembled when called to order by the Presiding Officer (Mr. SARBANES).

Mr. RIEGLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The motion to proceed to the consideration of S. 1480.

Recess Until 4:30 P.M.

Mr. ROBERT C. BYRD. Mr. President, I am informed that the parties are still negotiating and need a little more time. Therefore, I ask unanimous consent that the Senate stand in recess until 4:30 p.m. today.

There being no objection, the Senate, at 4:04 p.m., recessed until 4:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. Levin).

Recess for 15 Minutes

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 15 minutes.

There being no objection, the Senate, at 4:30:30 p.m., recessed until 4:45:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. Boren).

The PRESIDING OFFICER. The Chair in his capacity as the Senator from Oklahoma suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Unanimous-Consent Agreement

Mr. ROBERT C. BYRD. Mr. President, the parties who have been principally engaged in the negotiations with respect to the superfund bill have made considerable progress. They need several hours tomorrow in which to continue those negotiations.

In order to accommodate certain Senators, one in particular who will not be here Saturday and who wishes to be here when action is taken on the superfund legislation, I ask unanimous consent that further action on the pending motion be delayed until Monday, following the orders for the recognition of the two leaders or their designees.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, indeed, I will join the majority leader in his request.

I, too, believe substantial progress has been made. I would like to say that I believe enough progress has been made to predict that there will be a successful outcome, at least I hope so. Because I feel the parties are close enough together now, a great deal will be

gained by trying to complete consideration of this measure yet in this session of Congress.

It is my understanding of the request made by the majority leader that further consideration of the motion would simply be suspended until next Monday, at which time all the parties would be left in the status quo exactly where they were when we discontinued consideration of that motion this morning.

I ask the Chair if that understanding is correct and if the Chair will confirm that understanding.

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, then I certainly have no objection. I thank the majority leader for his good offices in working out this arrangement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The galleries will be in order.

Mr. ROBERT C. BYRD. Mr. President, will the Chair please get order in the galleries? The Senate is still in session and will be in session for a while.

While I have the floor, I want to take this occasion to say that the Senate will be in Saturday, also, because there is work to do unless all the work can be completed that we are hoping to get done prior to Saturday.

At this time, I hope that the EDA legislation can be brought up. The distinguished Senator from West Virginia, my senior colleague, Mr. RANDOLPH, is here for that purpose and Mr. STAFFORD is also here.

Mr. President, I yield the floor.

[From the Congressional Record, Nov. 24, 1980, pp. S14929–S15009]

ENVIRONMENTAL EMERGENCY RESPONSE ACT

MOTION TO PROCEED TO CONSIDERATION OF S. 1480

The ACTING PRESIDENT pro tempore (Mr. EXON). Under the previous order, the Senate will now resume consideration of the motion to proceed to the consideration of S. 1480, which the clerk will state.

The assistant legislative clerk read as follows:

A motion by the Senator from West Virginia (Mr. ROBERT C. BYRD) to proceed to the consideration of S. 1480.

ORDER TO VITIATE THE ORDER FOR THE YEAS AND NAYS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the yeas and nays on the motion be vitiated.

Mr. MORGAN addressed the Chair.

Mr. BAKER. Reserving the right to object, Mr. President, let me say that I shall not object to the request of the majority leader. Indeed, I hope that the order for the yeas and nays will be vitiated. A little later today, I believe the majority leader and I shall both have statements to make in respect of this bill.

The long and the short of it is that the parties have agreed, I believe, on the substance of a bill.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MORGAN. Mr. President, reserving the right to object, as I understand it, the Senate is going to proceed with the superfund bill?

Mr. ROBERT C. BYRD. Yes, we hope to proceed.

Mr. MORGAN. I wonder if the leader will give me some idea as to how long he anticipates the bill will take.

Mr. ROBERT C. BYRD. There is no time agreement on it, I say to the distinguished Senator from North Carolina. I hope that the Senate can complete action on the measure today. There will be amendments offered, I am sure. I think the prospects are good for completion of action today.

Mr. MORGAN. Will my leader tell me whether or not he thinks the prospects are good for completing it before the day is over?

Mr. ROBERT C. BYRD. Yes; I think the prospects would be good.

The reason I say that is that several Senators have spent a good bit of time during the last several days trying to work out some of the problems associated with the bill. They have developed a compromise, which I think is supported by a good many Senators on both sides, and there will be other amendments offered.

Mr. MORGAN. Mr. President, I understand that compromise has been worked on, but I also understand that it is a very, very important bill. I have not been one of those who has been taken into anyone's confidence. I would not want to preclude any chances or any opportunities that I might have along this line.

Mr. President, I wonder if the leader would be agreeable to the suggestion of the absence of a quorum so we may discuss it?

Mr. ROBERT C. BYRD. Certainly.

Mr. MORGAN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Environmental Emergency Response Act

Mr. ROBERT C. BYRD. Mr. President, I again ask unanimous consent that the order for the yeas and nays on the motion to proceed be vitiated.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1480) to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

The Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works with amendments as follows:

* * * * * * *

So as to make the bill read:

[NOTE.—The bill, as reported, is previously reproduced and may be found at p. 462.]

* * * * * * *

Mr. ROBERT C. BYRD. Mr. President, the Senators who are the principal parties with respect to this bill and who are most knowledgeable concerning the problems attendant thereto have worked diligently over a period of some days and many hours to achieve a compromise solution by way of amendment which is now ready to be offered.

The distinguished minority leader and I have discussed the amendment with Mr. RANDOLPH, who is the chairman of the committee; with Mr. STAFFORD, who is the ranking minority member of the committee; with Mr. BRADLEY, who is one of the foremost among those who are supporters of the effort to legislate in this area during this session; with Mr. MOYNIHAN, who is on the Finance Committee; with Mr. HELMS, who is equally interested; and with other Senators. We have come to the conclusion, based on their desire as well as ours to achieve a feasible solution, considering the time constraints and other factors, that Senator BAKER and I will cosponsor the amendment that has been worked out and that we will oppose any amendments thereto.

I am ready to proceed by the offering of the amendment and to add my name as a cosponsor, and to support the amendment against amendments thereto.

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

Mr. BAKER. Mr. President, I thank the majority leader, and I congratulate him on the statement he has just made.

I believe that this is a good result. It is an appropriate thing for the Senate to do. I fully expect that the substitute which will be offered shortly, and which I will join in cosponsoring, will be dealt with in the Senate on a favorable basis. I believe it will be agreed to, and it is my hope that this will be done today.

There is one amendment that will be offered—the majority leader and I have discussed this, as have the parties to the negotiations that led to the compromise—and that is an amendment by the distinguished Senator from North Carolina. It is my belief—I hope I state this correctly—that the amendment to be offered by the Senator from North Carolina, in fact, places a cap on the dollar amount.

Mr. HELMS. That is correct.

Mr. BAKER. That has been agreed to by all parties. I join the majority leader in saying that, with the exception of that amendment, we, as the leadership, will oppose any other amendments to this bill.

This compromise is a fragile thing. Indeed, as the majority leader has pointed out, it was the subject of extensive negotiations, spanning a number of days, and it deals with a very difficult subject.

I take this opportunity, then, to pay my respects and express my appreciation to all those who participated—Senator RANDOLPH and Senator STAFFORD, of course, but also Senator HELMS, Senator MCCLURE, Senator DOMENICI, Senator DOLE, and many others. I will elaborate on that later.

However, at the moment, Mr. President, I join the majority leader in saying that this is an important initiative. This is a compromise with which all of us can live. We will oppose any amendments to it, and I hope it is agreed to in the Senate today.

AMENDMENT NO. 2631

Mr. STAFFORD. Mr. President, I call up amendment No. 2631, which is at the desk, and ask for its immediate consideration.

Mr. ROBERT C. BYRD. Mr. President, this is a floor amendment.

Mr. STAFFORD. This is an amendment in the nature of a substitute.

Mr. ROBERT C. BYRD. Yes, but it is offered from the floor; and before it can be offered, the committee amendments have to be agreed to.

Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc and that the bill, as amended, then be considered as original text for the purpose of other amendments.

The PRESIDING OFFICER (Mr. HEFLIN). Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I renew my request. I ask that amendment No. 2631, which is pending at the desk, in the nature of a substitute for S. 1480, be given immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Vermont (Mr. STAFFORD), for himself and others, proposes an amendment numbered 2631 in the nature of a substitute.

Mr. STAFFORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

III

AMENDMENT NO. 2631 Calendar No. 1151

Purpose: .....

.....

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

November 21 (legislative day, November 20), 1980

Ordered to lie on the table and to be printed

AMENDMENT (in the nature of a substitute) intended to be proposed by Mr. BAKER (for Mr. STAFFORD) (for himself, Mr. RANDOLPH, Mr. MITCHELL, Mr. MOYNIHAN, Mr. BRADLEY, Mr. WILLIAMS, Mr. HEINZ, Mr. BURDICK, Mr. LEAHY, Mr. CULVER, Mr. LEVIN, Mr. HATFIELD, Mr. CRANSTON, Mr. INOUYE, and Mr. WEICKER)

Viz: Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. For purpose of this title, the term—

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "Administrator" means the Administrator of the United States Environmental Protection Agency;

(3) "barrel" means forty-two United States gallons at sixty degrees Fahrenheit;

(4) "claim" means a demand in writing for a sum certain;

(5) "claimant" means any person who presents a claim for compensation under this Act;

(6) "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act;

(7) "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals;

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(8) "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

(9) "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

(10) "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the

Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 102 of section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part

C of the Safe Drinking Water Act, (H) any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the Clean Water Act and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954,

in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954;

(11) "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section 221 of this Act or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section 232 of this Act;

(12) "ground water" means water in a saturated zone or stratum beneath the surface of land or water;

(13) "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act;

(14) "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pol-

lutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas);

(15) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976),

any State or local govenment, or any foreign government;

(17) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(18) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States;

(19) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party;

(20)(A) "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility imme-

diately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a) (3) or (4) of this Act, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control;

(C) in the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a) (3) or (4) (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body;

(22) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill

Tailings Radiation Control Act of 1978, and (D) the normal application of fertilizer;

(23) "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974;

(24) "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous sub-

stance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare. The term does not include offsite transport of hazardous substances, or the storage,

treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;

(25) "respond" or "response" means remove, removal, remedy, and remedial action;

(26) "transport" or "transporation" means the movement of a hazardous substance by any mode, including pipeline (as defined in the Pipeline Safety Act), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be con-

sidered as a continuity of movement and not as the storage of a hazardous substance;

(27) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction;

(28) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(29) "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act;

(30) "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act.

(31) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act; and

(32) "liable" or "liability" under this title shall be construed to be the standard of liability which obtains

under section 311 of the Federal Water Pollution Control Act.

REPORTABLE QUANTITIES AND ADDITIONAL DESIGNATIONS

SEC. 102. (a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released.

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be

deemed that quantity, the release of which requires notification pursuant to section 103 (a) or (b) of this title.

NOTICES, PENALTIES

SEC. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act

of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator of the Environmental Protection Agency of the existence of such facility,

specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: *Provided, however,* That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person

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in any criminal case, except a prosecution for perjury or for giving a false statement.

(d)(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined not

more than $20,000, or imprisoned for not more than one year, or both.

(3) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act.

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsection (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsection (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

RESPONSE AUTHORITIES

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.

(2) For the purposes of this section, "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by

ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 101(14) (A) through (F) of this title, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(b) Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal,

fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

(c)(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after $1,000,000 has been obligated for response actions or six months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement

with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in

question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.

(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under title II of this Act to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.

(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or dis-

poses of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have geen generated, stored, treated, or disposed of, or transported from;

(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of

weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.

(2)(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to

protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this Act, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(f) In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

(g)(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction,

repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

(h) Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(i) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Adminis-

trator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, and the Administrator of the Social Security Administration, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

(1) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

(2) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(3) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

(4) in cases of public health emergencies caused or believed to be caused by exposure to toxic sub-

stances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances; and

(5) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

NATIONAL CONTINGENCY PLAN

SEC. 105. Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding

to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

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(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annu-

ally. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, at least four hundred of the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities at least one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. Other priority facilities or incidents may be listed singly or grouped for response priority purposes; and

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

ABATEMENT ACTION

SEC. 106. (a) In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such

orders as may be necessary to protect public health and welfare and the environment.

(b) Any person who willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Within one hundred and eighty days after enactment of this Act, the Administrator of the Environment Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 311(c)(2), 308, 309, and 504(a) of the Federal Water Pollution Control Act, (2) sections 3007, 3008, 3013, and 7003 of the Solid Waste

Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act, (4) sections 113, 114, and 303 of the Clean Air Act, and (5) section 7 of the Toxic Substances Control Act.

LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which

causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;. and

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant, if the defendant establishes by a

preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c)(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, whichever is greater;

(B) for any other vessel, $300 per gross ton, or $500,000, whichever is greater;

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979), or rolling stock, $50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than $8,000,000. Such regulations shall take into account the size, type, location, storage,

and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this title.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A) the release or threat of release of a hazardous substance was the result of (i) willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive

damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) No person shall be liable under this title for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any facility or from any person who may be liable for a release or threat of release under this

section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State: *Provided, however,* That no liability to the United States or State shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. The President, or the authorized representative of any State,

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shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(g) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.

(h) The owner or operator of a vessel shall be liable in accordance with this section and as provided under section 114 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

(i) No person (including the United States or any State) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide,

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Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Recovery by any person (including the United States or any State) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

(k)(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and

assumed by the Post-closure Liability Fund established by section 232 of this Act when—

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by

this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of

such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

FINANCIAL RESPONSIBILITY

SEC. 108. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable

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waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United

States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practi-

cable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of not less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96–296.

(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(d) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided,* That this subsection shall not alter the liability of any person under section 107 of this Act.

PENALTY

SEC. 109. Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 108, the regulations issued thereun-

der, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each day of violation.

EMPLOYEE PROTECTION

SEC. 110. (a) No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged

violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such

proceedings, shall be assessed against the person committing such violation.

(d) This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this Act.

(e) The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the President shall make findings of

fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

USES OF FUND

SEC. 111. (a) The President shall use the money in the Fund for the following purposes:

(1) payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act;

(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official;

(3) payment of any claim authorized by subsection (b) of this section and finally decided pursuant to sec-

tion 112 of this title, including those costs set out in subsection 112(c)(3) of this title; and

(4) payment of costs specified under subsection (c) of this section.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b) Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State.

(c) Uses of the Fund under subsection (a) of this section include—

(1) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance;

(2) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance;

(3) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances;

(4) the costs of epidemiologic studies, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and

similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan; and

(6) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(d)(1) No money in the Fund may be used under subsection (c) (1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury,

destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) No money in the fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(e)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President may, in his discretion, defer payment of all claims or of any class of claims, make partial payment on a prorated basis to each affected claimant, or provide for the payment of claims on a priority basis determined under regulation.

(2) In any fiscal year, two-thirds of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section.

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel

or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce

any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

(k) The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered

and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.

(l) To the extent that the provisions of this Act permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

CLAIMS PROCEDURE

SEC. 112. (a) All claims which may be asserted against the Fund pursuant to section 111 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment.

(b)(1) The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be

fined up to $5,000 or imprisoned for not more than one (1) year, or both.

(2)(A) Upon receipt of any claim, the President shall as soon as practicable inform any known affected parties of the claim and shall attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and alleged liable party or parties can agree upon a settlement, it shall be final and binding upon the parties thereto, who will be deemed to have waived all recourse against the Fund.

(B) Where a liable party is unknown or cannot be determined, the claimant and the President shall attempt to arrange settlement of any claim against the Fund. The President is authorized to award and make payment of such a settlement, subject to such proof and procedures as he may promulgate by regulation.

(C) Except as provided in subparagraph (D) of this paragraph, the President shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in implementing this subsection and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the President that advertising is not reasonably practica-

ble. When the services of a State agency are used hereunder, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the President.

(D) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the President may use Federal personnel to implement this subsection.

(3) If no settlement is reached within forty-five days of filing of a claim through negotiation pursuant to this section, the President may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim. If the claimant is dissatisfied with the award, he may appeal it in the manner provided for in subparagraph (G) of paragraph (4) of this subsection. If the President declines to make an award, he shall submit the claim for decision to a member of the Board of Arbitrators established pursuant to paragraph (4).

(4)(A) Within ninety days of the enactment of this Act, the President shall establish a Board of Arbitrators to implement this subsection. The Board shall consist of as many members as the President may determine will be necessary to implement this subsection expeditiously, and he may increase or decrease the size of the Board at any time in his discretion in order to enable it to respond to the demands of

such implementation. Each member of the Board shall be selected through utilization of the procedures of the American Arbitration Association: *Provided, however,* That no regular employee of the President or any of the Federal departments, administrations, or agencies to whom he delegated responsibilities under this Act shall act as a member of the Board.

(B) Hearings conducted hereunder shall be public and shall be held in such place as may be agreed upon by the parties thereto, or, in the absence of such agreement, in such place as the President determines, in his discretion, will be most convenient for the parties thereto.

(C) Hearings before a member of the Board shall be informal, and the rules of evidence prevailing in judicial proceedings need not be required. Each member of the Board shall have the power to administer oaths and to subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to him for decision. Testimony may be taken by interrogatory or deposition. Each person appearing before a member of the Board shall have the right to counsel. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the President. If a person fails or refuses to obey a subpena, the President may invoke

the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(D) In any proceeding before a member of the Board, the claimant shall bear the burden of proving his claim. Should a member of the Board determine that further investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding the claim, he may request the President in writing to undertake such activities pursuant to section 104(b) of this title. The President shall dispose of such a request in his sole discretion, taking into account various competing demands and the availability of the technical and financial capacity to conduct such studies, monitoring, and investigations. Should the President decide to undertake the requested actions, all time requirements for the processing and deciding of claims hereunder shall be suspended until the President reports the results thereof to the member of the Board.

(E) All costs and expenses approved by the President attributable to the employment of any member of the Board shall be payable from the Fund, including fees and mileage expenses for witnesses summoned by such members on the same basis and to the same extent as if such witnesses were summoned before a district court of the United States.

(F) All decisions rendered by members of the Board shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to a member, unless all the parties to the claim agree in writing to an extension or unless the President extends the time limit pursuant to subparagraph (I) of this subsection.

(G) All decisions rendered by members of the Board shall be final, and any party to the proceeding may appeal such a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the arbitral hearing took place. In any such appeal, the award or decision of the member of the Board shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion: *Provided, however,* That no such award or decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any other provision of this Act or under any other provision of law. Nor shall any prearbitral settlement reached pursuant to subsection (b)(2)(a) of this section be admissible as evidence in any such proceeding.

(H) Within twenty days of the expiration of the appeal period for any arbitral award or decision, or within twenty days of the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such

award from the Fund. The President shall determine the method, terms, and time of payment.

(I) If at any time the President determines that, because of a large number of claims arising from any incident or set of incidents, it is in the best interests of the parties concerned, he may extend the time for prearbitral negotiation or for rendering an arbitral decision pursuant to this subsection by a period not to exceed sixty days. He may also group such claims for submission to a member of the Board of Arbitrators.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant

to this title, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d) No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a ques-

tion of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

LITIGATION, JURISDICTION AND VENUE

SEC. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in subsection (a) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsection (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

(c) Except as provided in this Act, no person may be required to contribute to any fund, the purpose of which is to

pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.

(d) Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 115. The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Hazardous Substance Response Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes on Petroleum and Certain Chemicals

SEC. 211. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. Tax on petroleum.
"SUBCHAPTER B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4611. Imposition of tax.
"Sec. 4612. Definitions and special rules.

"SEC. 4611. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 0.79 cent a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 0.79 cent a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCT.—The tax imposed by subsection (a)(2) shall be paid by the

person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985, except that if on September 30, 1983, or September 30, 1984—

"(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000, and

"(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if the tax is suspended,

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).

"SEC. 4612. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery

which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4611.

"Subchapter B—Tax on Certain Chemicals

"Sec. 4661. Imposition of tax.
"Sec. 4662. Definitions and special rules.

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"SEC. 4661. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"In the case of:	The tax is the following amount per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Napthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.47
Nickel	4.47
Phosphorous	4.47
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.40

"In the case of:	The tax is the following amount per ton
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

"(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is listed in the table under section 4661(b), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(3) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(4) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet

which is the equivalent of 2,000 pounds on a molecular weight basis.

"(5) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) EXCEPTIONS; OTHER SPECIAL RULES.—For purposes of this subchapter—

"(1) METHANE OR BUTANE USED AS A FUEL.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

"(2) SUBSTANCES USED IN THE PRODUCTION OF FERTILIZER.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, or ammonia which is a qualified substance—

"(i) no tax shall be imposed under section 4661(a) for any sale before October 1, 1983, and

"(ii) in the case of a sale after September 30, 1983, the table contained in section 4661(b) shall be applied by substituting 19

cents for the amount otherwise applicable to such substance.

"(B) QUALIFIED SUBSTANCE.—For purposes of this subsection, the term 'qualified substance' means any substance—

"(i) used in a qualified use by the manufacturer, producer, or importer,

"(ii) sold for use by the purchaser in a qualified use, or

"(iii) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

"(C) QUALIFIED USE.—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.

"(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under this section.

"(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(d) REFUND OR CREDIT FOR CERTAIN USES.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any taxable chemical, and

"(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

"(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, or ammonia without regard to subsection (b)(2), and

"(B) any person uses such substance, or sells such substance for use, as a qualified substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.".

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"CHAPTER 38. Environmental taxes.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1981.

Subtitle B—Establishment of Hazardous Substance Response Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Reponse Trust Fund" (hereinafter in this subtitle referred to as the "Response Trust

Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund as provided in this section.

(b) TRANSFERS TO RESPONSE TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, ETC.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered on behalf of the Response Trust Fund under this Act, and

(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

(D) penalties assessed under Title I of this Act, and

(E) punitive damages under section 107(c)(8).

(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Emergency Response Trust Fund for fiscal year—

(A) 1981, $44,000,000,

(B) 1982, $44,000,000,

(C) 1983, $44,000,000,

(D) 1984, $44,000,000, and

(E) 1985, $44,000,000, plus an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

(3) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—

(A) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

(B) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.

(c) EXPENDITURES FROM RESPONSE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

(A) response costs,

(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

(C) claims for injury to, or destruction or loss of, natural resources, and

(D) related costs described in section 111(c) of this Act.

(2) LIMITATIONS ON EXPENDITURES.—At least two-thirds of the amounts appropriated to the Response Trust Fund under subsection (b) (1)(A) and (2) shall be reserved—

(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).

SEC. 222. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) GENERAL RULE.—Any claim for damages filed against the Response Trust Fund may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount for damages with respect to any such claim out of any source other than the Response Trust Fund.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Response Trust Fund is unable (by reason of subsection (a)) to pay all of the claims (other than for response costs) payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

SEC. 223. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 221(b)(1) shall be transferred at least monthly from the general fund of the Treasury to the Response Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—The Secretary shall be the trustee of the Response Trust Fund, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be

printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of such Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of each such Trust Fund.

(c) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated to the Response Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

(2) LIMITATIONS ON ADVANCES TO RESPONSE TRUST FUND.—

(A) AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Response Trust Fund which is outstanding at any one time during any fiscal year shall not exceed an amount which the Secretary estimates

will be equal to the sum of the amounts which will be appropriated or transferred to such Trust Fund under paragraph (1)(A) of section 221(b) of this Act for the following fiscal year, and

(B) ADVANCES FOR PAYMENT OF RESPONSE COSTS.—No amount may be advanced after March 31, 1983, to the Response Trust Fund for the purpose of paying response costs described in section 111(a) (1), (2), or (4), unless such costs are incurred incident to any spill the effects of which the Secretary determines to be catastrophic.

(C) ADVANCES FOR OTHER COSTS.—The maximum aggregate amount advanced to the Emergency Response Trust Fund which is outstanding at any one time during any fiscal year for the purpose of paying costs other than costs described in section 111(a) (1), (2), or (4) shall not exceed one-third of the amount of the estimate made under subparagraph (A) for such fiscal year.

(D) FINAL REPAYMENT.—No advance shall be made to the Response Trust Fund after September 30, 1985, and all advances to such Fund shall be repaid on or before such date.

(3) REPAYMENT OF ADVANCES.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in subsection (b) and shall be compounded annually.

Subtitle C—Post-Closure Tax and Trust Fund

SEC. 231. IMPOSITION OF TAX.

(a) IN GENERAL.—Chapter 38, as added by section 211, is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Tax on Hazardous Wastes

"Sec. 4681. Imposition of tax.
"Sec. 4682. Definitions and special rules.

"SEC. 4681. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on the receipt of hazardous waste at a qualified hazardous waste disposal facility.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to $2.13 per dry weight ton of hazardous waste.

"SEC. 4682. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) HAZARDOUS WASTE.—The term 'hazardous waste' means any waste—

"(A) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on the date of the enactment of this Act (other than waste the regulation of which under such Act has been suspended by Act of Congress), or

"(B) subject to the reporting or recordkeeping requirements of section 3002 and 3004 of such Act, as so in effect.

"(2) QUALIFIED HAZARDOUS WASTE DISPOSAL FACILITY.—The term 'qualified hazardous waste disposal facility' means any facility which has received a permit or is accorded interim status under section 3005 of the Solid Waste Disposal Act.

"(b) TAX IMPOSED ON OWNER OR OPERATOR.—The tax imposed by section 4681 shall be imposed on the owner or operator of the qualified hazardous waste disposal facility.

"(c) TAX NOT TO APPLY TO CERTAIN WASTES.—The tax imposed by section 4681 shall not apply to any hazardous waste which will not remain at the qualified hazardous waste disposal facility after the facility is closed.

"(d) APPLICABILITY OF SECTION.—The tax imposed by section 4681 shall apply to the receipt of hazardous waste after September 30, 1983, except that if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure Liability Trust Fund exceeds $200,000,000, no tax shall be imposed under such section during the following calendar year.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 38 is amended by adding at the end thereof the following new item:

"SUBCHAPTER C—Tax on Hazardous Wastes.".

SEC. 232. POST-CLOSURE LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Post-closure Liability Trust Fund", consisting of such amounts as may be appropriated, credited, or transferred to such Trust Fund.

(b) EXPENDITURES FROM POST-CLOSURE LIABILITY TRUST FUND.—Amounts in the Post-closure Liability Trust Fund shall be available only for the purposes described in sections 107(k) and 111(j) of this Act (as in effect on the date of the enactment of this Act).

(c) ADMINISTRATIVE PROVISIONS.—The provisions of sections 222 and 223 of this Act shall apply with respect to the Trust Fund established under this section, except that the

amount of any repayable advances outstanding at any one time shall not exceed $200,000,000.

Subtitle D—Study

SEC. 241. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Administrator of the Environmental Protection Agency) shall conduct a study on—

(1) the feasibility and desirability of—

(A) a schedule of taxes for the Response Trust Fund—

(i) which is based on the disposal or generation of hazardous waste, and

(ii) which would reflect the degree of hazard and risk of harm to the public health and the environment posed by the various hazardous wastes,

(B) a schedule of taxes for the Post-closure Trust Fund—

(iii) which are designed to promote the recycling, incineration, and neutralization of hazardous waste,

(C) taxes imposed on substances not taxed by the amendments made by this title such as biomass and wastes designated as hazardous pursu-

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ant to section 3001 of the Solid Waste Disposal Act after the effective date of this Act,

(2) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of the Internal Revenue Code of 1954 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund,

(3) the impact of the taxes imposed by sections 4611, 4661, and 4681 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries (in consultation with the Secretary of Commerce and the United States Trade Representative), and

(4) the necessity for, and methods of financing (including the adequacy of the amount raised in light of future requirements), the Post-closure Liability Trust Fund.

(b) The Administrator of the Environmental Protection Agency shall conduct studies on and make such recommendations as he deems appropriate on amendments to assure that risk to public health and welfare and the environment from closed hazardous waste facilities is minimized. Recommendations shall include but not be limited to the appropriate divi-

sion of responsibility among the Post-closure Fund, State and local governments, the owners and operators of facilities for their care in perpetuity; the appropriate role of private insurance and means of encouraging the development of such.

(c) REPORT.—

(1) IN GENERAL.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a) (other than paragraph (4) thereof), together with such recommendations as he deems feasible.

(2) POST-CLOSURE LIABILITY TRUST FUND.—The Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a)(4), together with such recommendations as he deems feasible, on the date—

(A) which is 30 months after the date of the enactment of this Act, and

(B) which is 42 months after such date.

SEC. 242. TAX TREATMENT OF INDUSTRIAL DEVELOPMENT BONDS ISSUED TO FINANCE POLLUTION CONTROL OR WASTE DISPOSAL FACILITIES.

(a) IN GENERAL.—Section 103 of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is amended by redesignating subsection (h) as

subsection (j), and by inserting after subsection (g) the following new subsections:

"(h) AIR OR WATER POLLUTION CONTROL FACILITIES.—For purposes of this section—

"(1) IN GENERAL.—The term 'air or water pollution control facility' means land or property of a character subject to depreciation under section 167—

"(A) which is acquired, constructed, reconstructed, or erected to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat,

"(B) which is certified by the Federal certifying authority (as defined in section 169(d)(2)) or the State certifying authority (as defined in section 169(d)(3)) as meeting or furthering Federal or State requirements for abatement or control of water or atmospheric pollution or contamination, and

"(C) all or a portion of the expenditures for the acquisition, construction, reconstruction, or erection of which would not be made except for the purpose of abating, controlling, or preventing pollution.

"(2) EXEMPT FINANCING TO BE UNAVAILABLE FOR EXPENDITURES FOR PURPOSES OTHER THAN POLLUTION CONTROL.—

"(A) IN GENERAL.—Subsection (b)(4)(F) of this section shall not apply with respect to any issue of obligations (otherwise qualifying under subsection (b)(4)(F)) if the portion of the proceeds of such issue which is used to provide air or water pollution control facilities exceeds (by more than an insubstantial amount) the amount by which—

"(i) the cost of acquiring, constructing, reconstructing, or erecting the facility, exceeds

"(ii) the net profit which may reasonably be expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its actual useful life.

"(B) NET PROFIT.—For purposes of this paragraph, the term 'net profit' means the present value of benefits (using a discount rate of 12½ percent) to be derived from that portion of such cost properly attributable to the purpose of increasing the output or capacity, or extending the useful life, or reducing the total operating costs of

the plant or other property (or any unit thereof) in connection with which such facility is to be operated, reduced by the sum of—

"(i) the total cost incurred to acquire, construct, reconstruct, or erect the property (reduced by its estimated salvage value), and

"(iii) the present value (using a discount rate of 12½ percent of) all expenses reasonably expected to be incurred in the operation and maintenance of the property, including utility and labor costs, Federal, State, and local income taxes, the cost of insurance, and interest expense.

"(i) SOLID WASTE DISPOSAL FACILITIES.—For purposes of this section, the term 'hazardous waste or solid waste disposal facilities' includes land and property of a character subject to depreciation under section 167 which is acquired, constructed, reconstructed, or erected for no significant purpose other than to comply with hazardous or solid waste management requirements imposed by the Solid Waste Disposal Act.".

(b) CONFORMING AMENDMENT.—Subparagraph (E) of section 103(b)(4) of such Code is amended by inserting ", hazardous waste," after "sewage".

(c) CLARIFICATION OF REFERENCE.—For purposes of section 103(i) of the Internal Revenue Code of 1954, any reference to the Solid Waste Disposal Act means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as it is, or may be, amended from time to time by other Acts. No inference shall be drawn from the preceding sentence with respect to the presence or absence of the words "as amended", by themselves or in combination with a reference to another Act, whenever reference is made in any other provision of law to an Act by its short title.

(d) The amendments made by subsections (a) and (b) of this section shall apply with respect to obligations issued after the date of enactment of this Act and with respect to taxable years ending after that date.

TITLE III—MISCELLANEOUS PROVISIONS

REPORTS AND STUDIES

SEC. 301. (a) The President shall submit to the Congress, within four years after enactment of this Act, a comprehensive report on experience with the implementation of this Act, including, but not limited to—

(1) the extent to which the Act and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(2) a summary of past receipts and disbursements from the Fund;

(3) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(4) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(5) the record of State participation in the system of response, liability, and compensation established by this Act;

(6) the impact of the taxes imposed by title II of this Act on the Nation's balance of trade with other countries;

(7) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government

and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this Act. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this Act, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions.

(b) The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 107 of this Act, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of the date of enactment of this Act, and shall submit an

interim report on his study within one year of the date of enactment of this Act.

(c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of the date of enactment of this Act on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the require-

ments of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e)(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of enactment of this Act.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter

shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after the enactment of this Act, shall modify the national contingency plan to provide for the pro-

tection of the health and safety of employees involved in response actions.

EFFECTIVE DATES, SAVINGS PROVISION

SEC. 302. (a) Unless otherwise provided, all provisions of this Act shall be effective on the date of enactment of this Act.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to

releases of hazardous substances or other pollutants or contaminants. The provisions of this Act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

EXPIRATION, SUNSET PROVISION

SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985.

CONFORMING AMENDMENTS

SEC. 304. (a) Subsection (b) of section 504 of the Federal Water Pollution Control Act is hereby repealed.

(b) One-half of any sums appropriated prior to the enactment of this Act under subsection (k) of section 311 of the Federal Water Pollution Control Act and all sums appropriated under section 504(b) of the Federal Water Pollution Control Act shall be transferred to the Fund established under title II of this Act.

(c) In any case in which any provision of section 311 of the Federal Water Pollution Control Act is determined to be in conflict with any provisions of this Act, the provisions of this Act shall apply.

LEGISLATIVE VETO

SEC. 305. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of title I of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the dealing with the matter of , which rule or regulation was transmitted to Congress on .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House

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within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TRANSPORTATION

SEC. 306. (a) Each hazardous substance which is listed or designated as provided in section 101(14) of this Act shall, within ninety days after the date of enactment of this Act or at the time of such listing or designation, whichever is later, be listed as a hazardous material under the Hazardous Materials Transportation Act.

(b) A common or contract carrier shall be liable under other law in lieu of section 107 of this Act for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing of such substance as a hazardous material under the Hazardous Materials Transportation Act, or for substances listed pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however,* That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

ASSISTANT ADMINISTRATOR FOR SOLID WASTE

SEC. 307. (a) Section 2001 of the Solid Waste Disposal Act is amended by striking out "a Deputy Assistant" and inserting in lieu thereof "an Assistant".

(b) The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act, shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code.

(c) The amendment made by subsection (a) shall become effective ninety days after the date of the enactment of this Act.

SEPARABILITY

SEC. 308. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this Act shall not be affected thereby.

[From the Congressional Record, Nov. 24, 1980—Continued]

Mr. STAFFORD. Mr. President, in addition to the names of cosponsors which appear on the substitute now before the Senate, I ask unanimous consent that the names of the following Senators be added as cosponsors of this measure: The Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Minnesota (Mr. DURENBERGER).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I yield to the chairman of the Committee on Environment and Public Works, my dear friend and colleague over the years, Senator RANDOLPH.

Mr. RANDOLPH. Mr. President, this measure is vitally important to the people of the United States. This legislation has been with us in the committee for a long, long time.

Mr. President, I earnestly support S. 1480, the Environmental Emergency Response Act, as I supported it as I did on July 11 of this year when 11 members of our Committee on Environment and Public Works, in rather general agreement, reported the legislation we discuss today. The substitute is not entirely as reported from the committee but I do want to say, of the 14 members of our committee, 11 members voted for the measure and to report it to the Senate. In addition to myself, they are Senators BENTSEN, BURDICK, CHAFEE, CULVER, DOMENICI, GRAVEL, HART, MITCHELL, MOYNIHAN, and STAFFORD.

The Committee on Environment and Public Works reports an average of 50 bills to the Senate in any given Congress. It shows that the committee has a wide range of subject matters and when we reorganized the committee structure some nearly 4 years ago we had to take on certain new matters.

But the committee membership, working at a closer ratio than any other committee in the Senate—eight Democrats and six Republicans—has worked together. Senator STAFFORD, the ranking minority member, will substantiate that in our progress on bills, very important bills, we have worked with very few animosities. There was no partisanship permitted insofar as I could lead the committee on the discussion of matters entirely upon what we were concerned with at the time. The majority of these are measures familiar to any commitee: Extensions and reauthorizations of ongoing Federal programs. Occasionally, however, the committee brings landmark legislation to the Senate. S. 1480 is such a bill.

The majority of these measures are programs that are not sometimes given the attention, which they should have from the body politic, from the people of the country as a whole. But this legislation, Mr. President, is landmark legislation, by whatever term, a watershed in legislation of this type.

It is such a bill and the compromise is such a compromise. We have had during the past several days approximately 25 or 30 Senators from varying viewpoints and background, experiences, contacts and interests participating in the discussions, including, of course, the majority leader, Mr. ROBERT C. BYRD, and the minority leader, Mr. BAKER.

I am disappointed that such an important bill to help solve such a pressing problem must be addressed in the very last days of this Congress. I had hoped that we could have resolved this issue much earlier, as the House has done. This legislation addresses one of the great problems of our time: The poisoning of our land and water.

We are here to discuss a compromise of the reported bill in order to find solutions to these urgent problems. We seek compromise because we are realists.

The problem of hazardous waste disposal in this Nation has reached frightening proportions. While new toxic chemicals and new hazardous waste disposal facilities will be controlled and regulated under existing law, there is no procedure for dealing with dangers posed by chemicals already in the marketplace and the haphazard handling of toxic materials and past disposal of chemical wastes. The increasing incidents of contaminated drinking water, surface water, and ground water; the destruction of fish and wildlife; and the threats to public safety from health hazards, explosions, and fires have all made this bill necessary. Our Nation cannot afford more Love Canals or incidents like that in Elizabeth N.J., or New Orleans. Our Nation cannot afford a delay in passing a law that will provide adequate Government cleanup and response for chemical accidents.

My State of West Virginia has been spared incidents of the magnitude of those I referred to. But, West Virginia is among the 10 leading States in the production of hazardous substances, so there is always a substantial threat.

We were cautioned not to act at this time, and there were those who believed in good conscience that we should wait until next year. I remember reading recently the editorial in the Washington Star which spoke of the seriouness of this problem but suggested that it would be better to wait until next year, so we understand the across-the-board questioning about our efforts.

But to me, and to others on the committee, we cannot delay in passing a law that will provide adequate cleanup and response to hazardous substances accidents.

The reported committee bill provides for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites. It was an effort to cope, at least in part, with the spread of toxic chemicals through our environment, and with the dangers these chemicals pose to our citizens and to our valuable resources.

In this Congress, the Senators and staff of the Environment and Public Works Committee have spent nearly 3 years listening to testimony, discussing, and debating possible solutions to the problems we have heard so much about recently. We have worked hard to achieve a bipartisan consensus on the committee through 11 days of the hearings and 17 days of markups.

Before the election recess, I noted that the Chemical Manufacturers Association, the National Association for Chemical Producers, supported the House bill (No. 7020). That legislation addresses only a portion of the problems produced from hazardous chemicals into the environment, but it certainly was a positive step in the right

direction. I had heard the industry had accepted the need to address these growing problems and had agreed on some solutions.

Now I hear differently. Now I hear that industry support never really existed for the House superfund bill.

CMA had favored legislation that would only deal with abandoned hazardous waste sites.

However, the problem of dangerous chemicals leaking into the environment now, or over the next 4 years, will not come solely from abandoned waste sites.

I was pleased to read in the New York Times last week that DuPont had come forward favoring superfund legislation in this Congress. This is a positive move. I hope that other industrial concerns will follow suit as we debate here today.

Now is the time to address the need for creating a better response mechanism so we can respond to the tragic incidents we find across this country in every State.

And let us not underestimate the seriousness of the problem. It does not derive solely from dump sites.

The Committee on Environment and Public Works has become aware that dump sites alone are not the only sources of toxic chemical releases. We now know that the consequences of these releases are widespread, affecting public health, valuable resources, and local economies far away from dump sites.

For example, the committee thought in 1972 it had addressed the problem of oil and chemical spills. Section 311 of the Clean Water Act provided for Government response, public funding, and liability of responsible parties. A revolving fund of $35 million was authorized to clean up these spills. Although other funds are authorized to clean up chemical releases under the Clean Water Act, section 311 is the only fund which has ever received an appropriation. In the mid-1970's the Nation began hearing about chemical disasters far beyond the scope of section 311.

For example, the General Electric Co. dumped spent polychlorinated biphenyls—PCB's—into the Hudson River in the 1970's, closing it to commercial fishing just when it was recovering from earlier pollution problems. The cost of dredging these cancer-causing wastes is between $25 and $200 million, depending on how thoroughly the job is completed.

In another incident, one small chemical plant in Hopewell, Va., dumped kepone production wastes into the James River, closing down a $2 million annual harvest of striped bass, blue crabs, and other seafood. That problem struck close to home here in Washington. For a period of time, our local seafood sales plummeted because the public did not want to risk buying seafood that might be coming from the James River.

And in the San Gabriel Valley of California, 52 wells supplying water to nearly 400,000 residents have been found to contain trichloroethylene--TCE—which is poisonous and causes cancer. Some wells tested at over 600 parts per million.

We are learning about new disasters like these all the time.

Last summer, PCB's leaked from a broken transformer into animal feed at a feed processing plant. The leakage was not discovered in time, and as a result, more than $2 million worth of live-

stock and food were contaminated and had to be taken off the market in 19 States.

And a few months ago, in Louisiana, a docking accident resulted in one of the worst marine spills in the history of the United States. A large quantity of PCP spilled into the Mississippi River. More than 40 square miles of prime fishing grounds in the Mississippi River Delta were for a time closed.

The dangers posed by buried chemical wastes have only recently begun to make a dent in our national consciousness, largely as a result of the severe health problems discovered at Love Canal. As I said earlier, however, Love Canal is not a unique problem. For example:

In December 1978, several 55-gallon drums were seen floating in a flooded creek near Louisville, Ky. When environmental officials traced the drums upstream, they were astounded by what they found. There, in a rural meadow surrounded by wooded Kentucky hills, more than 20,000 drums full of toxic chemicals sat out in the open, exposed to the elements and rusting away. This leafy glade now has the name, "Valley of the Drums."

Last summer, a slick of oil was noticed floating on the Susquehanna River at Pittston, Pa. When EPA officials responded under section 311, they learned the slick was more than just oil. It included a variety of highly poisonous chemicals. This mess was pouring from the mouth of an old coal mine shaft. These chemicals were wastes trucked to Pittston from all over the Northeast, where they were poured into a ventilating shaft in a mine 3 miles from the river. At least 300,000 gallons of acids, cyanide compounds, industrial solvents, waste oil, and other chemicals are still believed to be in the mine. They could be washed to the surface anywhere in a 10-square-mile area.

Representative ROBERT ECKHARDT of Texas, who shared our committee's concern for learning the extent of the problem, found that 1,100 disposal sites, holding about 100 million tons of chemical wastes, had been used by the Nation's 53 largest chemical companies since 1950 without any regulatory control. During that time, some 950 waste haulers were used by these chemical companies to take wastes to unknown locations. The operators of 594 plants owned by these companies did not know where all their wastes had gone.

Mr. President, the chemical disposal problem is not just a matter of cleaning up drums of chemicals buried in the ground. Toxic wastes reach drinking water in other ways as well. For example, EPA has identified approximately 12,000 industrial impoundments and treatment lagoons which contain hazardous wastes. There is virtually no ground water monitoring at these sites, and a third of them are potentially prime sources of ground water contamination because they are unlined, they lie over usable ground water aquifers, and they are located in soils which are permeable and would allow their contents to sink into the ground water.

Mr. President, the releases causing these massive losses occur in many different ways, not just through leakage from a limited number of dump sites.

Mr. President, long-term effects of chemical releases are also having a grave impact on our public health. Senator STAFFORD,

Senator CULVER, and former Senator Muskie released a report by the Public Health Service in which the Surgeon General reported:

> That toxic chemicals are adding to the disease burden of the United States in a significant, although as yet ill-defined way. In addition, we believe that this problem will become more manifest in the years ahead.

These are the problems we are faced with. To meet these problems, the Committee on Environment and Public Works reported S. 1480, The Environmental Emergency Response Act. The purposes of this bill were:

First, to make those who release hazardous substances strictly liable for cleanup costs, mitigation, and third-party damages. Thus, it assures that the costs of chemical poison releases are borne by those responsible for the releases [Sec. 107].

Second, the bill would establish broad Federal response authority [Sec. 104], and a fund of $4.1 billion over 6 years to clean up and mitigate damages where a liable party does not clean up or cannot be found [Sec. 221].

Third, the bill would provide an opportunity through the courts, and a more limited opportunity through the fund, for victims to receive prompt and adequate compensation for losses and injuries [Secs. 111 and 112].

Fourth, the bill would provide that the fund be financed largely by those industries and consumers who profit from products and services associated with the hazardous substances which impose risks on society [Sec. 211].

These solutions seemed reasonable. Granted, the scope of such legislation was considerable, but the problem is considerable. Now, we also find in these last days before the demise of the 96th Congress that opposition to such an approach is also considerable. So, we speak today of compromise—reasonable compromise.

The present and future chairmen of the Environment and Public Works Committee, Senator STAFFORD and myself, have, in hopes of expediency and fairness, created an alternative to S. 1480 which embodies these features of the Senate and House bills where there has been positive consensus. We have tried to eliminate those provisions which were controversial.

Last week Senator STAFFORD and I offered an amendment called the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Along with other Senators, we proposed concise language to deal effectively in this Congress with the chemical contamination problems which continue to plague us.

We have made many concessions from the original bill reported last summer. Some of the concessions that have been made in this compromise warrant close scrutiny here.

We have kept strict liability in the compromise, specifying the standard of liability under section 311 of the Clean Water Act, but we have deleted any reference to joint and several liability, relying on common law principles to determine when parties should be severally liable [Sec. 107].

We have deleted the Federal cause of action for medical expenses or property or income loss.

We have deleted the special medical causation provisions.

We have cut the size of the fund considerably from $4.1 billion for 6 years to $1.6 billion for 5 years [Secs. 221 and 303].

We have added a new third-party defense to liability [Sec. 107].

We have added limits of liability under this bill for vessels, trucks, trains, and aircraft [Sec. 107].

We have even added, in this nonregulatory bill, a provision to allow a legislative veto of regulations [Sec. 305].

I think we have moved a considerable way toward alleviating those fears and concerns that so many have voiced on S. 1480. I would hope others would go as far. But let me say something that Senator STAFFORD and I feel strongly about. It is the scope of the response provided in our amendment. We maintain that H.R. 7020 which deals only with abandoned hazardous waste sites is too narrow. We believe that coverage of spills of oil and hazardous substances into navigable water, as embodied in H.R. 85 is also not enough. The problem is bigger than the singular scope presented in each of those bills. The problem encompasses both waste sites and spills and leaks of chemicals into the environment—and that is what we must address here. We would neglect out duties to deal with only half a problem. The compromise, while greatly pared from its original version, must and does at least address the scope of the problem that this Nation faces [Secs. 103 and 104].

The liability regime [Sec. 107] in this substitute contains some changes in language from that in the bill reported by the Committee on Environment and Public Works. The changes were made in recognition of the difficulty in prescribing in statutory terms liability standards which will be applicable in individual cases. The changes do not reflect a rejection of the standards in the earlier bill.

Unless otherwise provided in this act, the standard of liability is intended to be the same as that provided in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321). I understand this to be a standard of strict liability.

It is intended that issues of liability not resolved by this act, if any, shall be governed by traditional and evolving principles of common law. An example is joint and several liability. Any reference to these terms has been deleted, and the liability of joint tort feasors will be determined under common or previous statutory law.

As under section 311, due care or the absence of negligence with respect to a release or threatened release of a hazardous substance does not constitute a defense under this act.

Mr. President [Sec. 107(j)], I would like to draw the Senate's attention to a very important aspect of the Stafford-Randolph substitute which is not addressed in either H.R. 85 or H.R. 7020. In developing the Senate's bill, particular attention has been given to how releases from facilities with existing Federal permits are to be treated. The Environment and Public Works Committee and particularly Senator BENTSEN, spent considerable time working out how S. 1480 should apply to federally permitted releases. The applicable federally permitted release provisions of S. 1480 have been preserved in the Stafford-Randolph substitute.

The Environment and Public Works Committee concluded that adoption of an express Federal liability mechanism for releases

pursuant to certain Federal permit systems seemed inappropriate at this time. Such a proposition was particularly troublesome for permits under section 402 of the Clean Water Act because the Congress had excluded them from the act's section 311 liability provisions in 1978. The rule of common law is that compliance with a permit is not a defense to liability.

Moreover, the Congress has never said or suggested that a Federal permit amounts to a license to create threats to public health or the environment with legal immunity. However, in view of the large sums of money spent to comply with specific regulatory programs, liability for federally permitted releases ought to be determined based on the facts of each individual case. Therefore, the Stafford-Randolph substitute authorizes response to federally permitted releases, but requires costs to be assessed against the permit holder under the liability provisions of other laws, not this bill.

Section 107(j) of the substitute bill preserves the enforcement provisions of the regulatory laws. Permitted releases have some potential for causing harm in some emergency situations it will be difficult to distinguish between a permitted release and other sources. The President, using the fund, is expressly authorized to respond to problems caused by federally permitted releases. Further, the fund would be available to pay response costs and natural resource damages covered by this bill. The fund in recouping such costs, or any private damage actions, must rely on other law—common law or Federal or State statutory law—in lieu of the liability provisions of **section 107**. The determination of exactly what liability standards, defenses, or other rules apply will be made on a case-by-case basis pursuant to regimes other than that of this bill.

The defined term "federally permitted release" **(section 101(10))** is a key element in the treatment of these releases under this bill. For purposes of this bill, it includes action by the appropriate Federal agencies or under federally approved State programs. Where the term "legally enforceable" is used in **section 101(10)**, to qualify for exemption from liability for any federally permitted release, the relevant terms of such permit must be legally enforceable.

"Federally permitted releases" would be excluded from the liability and notification provisions of this legislation.

The Environment and Public Works Committee continues to recognize the difficulty of marking clearly where the spill response programs of section 311 and of this bill apply and where the general discharge regulatory permit programs of section 402 of the Clean Water Act apply. This issue was central to an amendment to section 311 of the Clean Water Act enacted in 1978. The first three parts of the federally permitted release provision of the substitute bill preserve that amendment and the rulemaking taken by the Environmental Protection Agency to carry it into effect.

Thus the explanation for the 1978 amendment and the implementing regulations of the Environmental Protection Agency are continued.

Section 101(10) of the substitute contains other similar clarifications regarding pollution control programs under the wetlands protection program of section 404 of the Clean Water Act, the Clean Air Act, subtitle C of the Solid Waste Disposal Act, the Marine

Protection Act, the Safe Drinking Water Act, and the Atomic Energy Act.

While the exemptions from liability for federally permitted releases are provided to give regulated parties clarity in their legal duties and responsibilities, these exemptions are not to operate to create gaps in actions necessary to protect the public or the environment.

Accidents—whatever their cause—which result in, or can reasonably be expected to result in releases of hazardous pollutants would not be exempt from the requirements and liabilities of this bill. Thus fires, ruptures, wrecks and the like invoke the response and liability provisions of the bill **[Secs. 104 and 107].**

The Environment and Public Works Committee does not intend for the notification elements **[Sec. 103]** of the bill to apply to the federally permitted releases defined in **section 101(10).** The laws authorizing permits and regulations that control these releases provide for notification and such notification procedures should provide the same public benefits—especially regarding timely response—as would be provided in this substitute bill. Notice is crucial to the timely government response which is central to the superfund bill. The federally permitted release exceptions are not directed at avoiding notice, but rather to make it clear which provisions of law apply to discharging sources.

Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 establishes the circumstance when notice must be given to the Government of a release of hazardous substances, including hazardous wastes. Notice of a release is the essential first step which enables the Government to respond quickly to the more significant releases, if the parties responsible fail to. The 8 years of experience with the spill response program established by section 311 of the Clean Water Act amply demonstrate the necessity of immediate notice if an emergency response program is to be effective in protecting public health, welfare, and the environment. The Government response program that would be established by this bill is modeled upon the experience with the Clean Water Act's spill response program.

Section 103 of this bill will result in procedural regulations concerning notice of a release of hazardous substances.

In issuing regulations under this section, the President may identify certain classes of persons, substances, or vessels and facilities which, although they may be responsible for releases of reportable quantities, are not required to report under **section 103** of the act because they are already required to report or keep records of such releases under another statute, or because requiring such persons to report would create an undue administrative burden on the National Response Center or another Federal or State agency.

For example, it may not be necessary to require facilities regulated under subtitle C of the Solid Waste Disposal Act to report the receipt of shipments of hazardous waste to the National Response Center because records of those shipments will be kept under the manifest system required under subtitle C of the Solid Waste Disposal Act and such reporting system may be sufficient for the purposes of this act. Or it may not be appropriate to require generators of small (but reportable) quantities of some hazardous wastes

to report releases of those wastes because such reporting might tie up resources which should be directed at more significant releases.

Another change in government notification from that in S. 1480 involves the establishment and use of reportable quantities of hazardous substances under **section 102**. The earlier Senate proposals authorized regulations establishing reportable quantities for hazardous substances, but required reporting of all releases of a hazardous substance.

Authority to designate additional hazardous substances and to establish reportable quantities for all hazardous substances is retained, but reporting of releases is now limited to those involving such reportable quantities. To assure that reporting commences immediately upon enactment, **section 102(b)** establishes a reportable quantity of one pound of all hazardous substances (except those already designated under the Clean Water Act) unless and until superseded by any regulations issued after the act's passage.

As noted by the Committee on Environment and Public Works (Report No. 96–84, p. 29), determination of such quantities need not take into account harm to public health or the environment. Reportable quantities are used solely as a Government notification trigger, and are not relevant under this act for purposes of liability or assessment of civil penalty.

Section 105 calls for the revision of the existing national contingency plan originally prepared pursuant to section 311 of the Clean Water Act. The revisions would expand the plan to effectuate the new powers and responsibilities created by this act.

As revised, the plan will be a comprehensive document detailing emergency response and remedial action procedures, including methods for discovery and investigation, methods for evaluating and remedying environmental emergencies and appropriate roles for governmental and private entities. The plan will contain guidance on cost-effectiveness. Such guidelines are intended to assure that alternative remedial options are considered when planning cleanup actions at a particular site. This guidance will also provide both criteria and procedures for selection of the most cost-effective and environmentally sound alternative for remedying the site. This selection will require a balancing of a variety of factors, including cost and engineering, to achieve the health and environmental goals of the legislation.

The plan also requires establishment of criteria for selection of priority sites or suspected sites. These criteria will be utilized to establish a priority list of sites requiring remedial action. This list must be published at least yearly, but may be revised at any time. This is intended to provide flexibility in setting the priority list to assure that the list, to the extent possible, reflects those sites or suspected sites that merit top priority treatment. Accordingly, although this list must be published as part of the national contingency plan, it is not intended that the entire plan be republished each time the priority list is revised. Public notice of the revised list will be sufficient.

This expansion of the section 311 program is expected to proceed without creation of regulatory or other gaps. It is intended that existing authority and regulations issued under section 311 of the Clean Water Act continue until superseded or revised by the imple-

mentation of this act. Response, capabilities, notification requirements, existing regulations and the national contingency plan will remain in effect until replaced or supplemented under authority of this act.

Section 106(c) of the act requires the Administrator to develop guidelines for use of the imminent hazard and enforcement authorities of several major environmental laws. This provision reflects two facts. First, existing statutory authority is often underutilized; second, it reflects the fact that this legislation creates additional authorities that complement these laws.

These guidelines are intended to outline existing authorities and the new authorities created by this act, in order to adequately apprise governmental and private entities of these authorities and their relationship to cleanup authorities.

It is recognized, however, that the diverse nature of environmental emergencies does not lend itself to rigid rules for utilization of a variety of legal authorities. Accordingly, this guidance is in no way intended to hamper either response or legal actions taken pursuant to these authorities. Rather, it will provide a framework within which to make crucial response and enforcement decisions.

Mr. President, this bill places the major responsibility for implementation directly on the President **[Sec. 115]**. Naturally, this responsibility will be delegated to the agencies that can most appropriately carry out each particular function. When the administration developed its own legislation which was submitted to the Congress last year, a division of responsibilities was agreed to which I believe represents the most appropriate way to implement this legislation.

First, the management of the Fund would be the responsibility of the Environmental Protection Agency. In addition, the provisions of **sections 102 and 103** would also be administered by EPA. Second, collection of the taxes and enforcement of the tax structure would be the responsibility of the Treasury Department **[Sec. 211]**. Third, the present distribution of responsibility for spills of hazardous substances between EPA and the Coast Guard, as established under the current National Contingency Plan, should be maintained **[Sec. 105]**. Finally, response and remedial action associated with hazardous sites would be implemented by EPA **[Sec. 104]**. It is extremely important that the responsibilities be clearly delineated so that quick responses to environmental problems not be impeded by bureaucratic quarreling and confusion.

I am pleased that every member of the Committee on Environment and Public Works took an active role in the long road toward developing sound legislation. This legislation, from its first days to the final compromise form we present today is primarily the creation of BOB STAFFORD. Credit should also go to Senator JOHN CULVER, chairman of the Resource Protection Subcommittee, to former Senator Edmund Muskie, who as chairman of the Subcommittee on Environmental Pollution worked jointly with Senator CULVER until he left the Senate. The long hours of dedication contributed by Senator JOHN CHAFEE and Senator QUENTIN BURDICK definitely played leading roles during the deliberations of this bill. I also thank Senators MITCHELL, BENTSEN, MOYNIHAN, HART,

GRAVEL, BAKER, PRESSLER, DOMENICI, and SIMPSON for their important contributions.

There is not any question that this Nation would be paralyzed without the tremendous discoveries and accomplishments established by our chemical industry. We can be proud of our standard of living in this Nation and can grant a considerable amount of the credit to chemical innovation.

But we have begun to see the threat of deadly chemicals which find their way into every niche of the biological systems so precious to us here on Earth.

We will not stop or even hinder the well-being of the important industries which produce critical synthetic materials in this country. But we must try to stop the spread of disease, the spread of environmental catastrophes, and the spread of poor handling of these dangerous products which can produce such problems.

I believe we can send an important signal to America today by moving with the compromise before us. We are asking for far less than the Committee on Environment and Public Works asked for last July with S. 1480. But we are asking for a chance to show we care and will respond to those who have suffered in the past and those who may suffer in the future.

Mr. STAFFORD. Mr. President, the country has waited a long time for this moment.

We are considering, and hopefully we will pass, a bill dealing with chemical poisons in the environment. What we have before us is, in this Senator's judgment, the major preventative health bill to come before the Congress in 4 years.

Together with the other members of the Committee on Environment and Public Works I have worked on this legislation nearly 3 years. I will not say that it has been a labor of love, because the process has been trying. We have been beset with problems at nearly every turn.

But it has been a 3-year trial well worth it, if we succeed. Eighty percent of the American people want some legislation. That sentiment is reflected in the Senate, where 24 Senators have joined as sponsors of S. 1480. And, judging from what we know, those concerns are well founded. The Surgeon General of the United States considers toxic chemicals to pose the major threat to health in the United States for the decade of the 1980's.

Modern chemical technology has produced miracles that have greatly improved this Nation's standard of living. But the increased generation of hazardous substances associated with these new products has proved to be a serious threat to our Nation's public health and environment.

The legacy of past haphazard disposal of chemical wastes and the continuing danger of spills and other releases of dangerous chemicals pose what many call the most serious health and environmental challenges of the decade. Chemical spills capable of inflicting environmental harm occur about 3,500 times each year, and an estimated $65 to $260 million is needed to clean them up. More then 2,000 dumpsites containing hazardous chemicals are believed by the Environmental Protection Agency to pose threats to the public health. The costs of containing their contents is estimated to be an average of $3.6 million per site.

The acceptance of man-made chemicals—to the extent that they are hardly recognized as such anymore—has become a fact of daily life in the United States. We are dependent on synthetic chemicals for health, livelihood, housing, transportation, food, and for our funerals.

But within recent years, there has been a realization that what is our meat may also be our poison.

Item—In a report dated March, 1980, the Library of Congress concluded that damages to natural resources of the United States because of toxic chemicals were "substantial and enduring." The report identified damaged resources ranging from all five of the Great Lakes to the aquifer underlying the San Joaquin Valley, possibly the richest agricultural area in the United States.

Item—In a report to the President of the United States, the Toxic Substances Strategy Committee concluded that the cancer death rate in the United States had increased sharply and that "occupational exposure to carcinogens is believed to be a factor in more than 20 percent of all cases of cancer."

Item—In a report released in the spring of 1980, by the Office of Technology Assessment, agricultural losses because of chemical contamination were placed at $238 million. OTA said the value was based on economic data from only 6 of the 50 States and was therefore "likely to be a gross underestimation of the actual costs."

In 1979, the total production of chemicals in the United States was 565 billion pounds. Of this amount, 347 billion pounds was of chemicals officially classified by the U.S. Government as hazardous. Production growth is increasing at a rate of 7.6 percent in 1979. At that rate, production will double in 10 years.

This is not to say that chemicals are necessarily bad. On the contrary, they have contributed mightily to American prosperity. We rely increasingly on them because of this contribution which they made to American life in a changing and sometimes hostile world. In fact, most chemicals are benign. Only a small number of them cause cancer, birth defects, or other illiness. But the fact remains that, small though the relative number of these dangerous chemicals may be, they can cause terrible damage when set loose on the public.

Moreover, because we do use these substances in such a large volume, the number of incidents involving them has increased dramatically in the recent past.

Using existing documentation, the Environmental Protection Agency identified some 250 hazardous waste sites involving damages or significant threats of damages. Among the reported incidents were 27 sites associated with actual damages to health (kidneys, cancer, mutations, aborted pregnancies, and so forth), 32 sites which have resulted in the closure of public and private drinking water wells, 130 sites with contaminated ground waters and 74 sites where natural habitats have been damaged and are adversely affecting indigenous species.

The preliminary findings of a joint States/EPA survey of pits, ponds, and lagoons used to treat, store, and dispose of liquid wastes identify 11,000 industrial sites with 25,000 such surface impoundments. At least one-half of the sites are believed to contain hazardous wastes. The survey found that virtually no monitoring of

ground water was being conducted and that 30 percent of the impoundments, or 2,455 of the 8,221 sites assessed, are unlined, overlie usable ground water aquifers, and have intervening soils which would freely allow liquid wastes to escape into ground water.

Thomas Jorling, the Assistant Administrator for Water and Waste Management for the Environmental Protection Agency, testified before the Subcommittee on Environmental Pollution and Resource Protection in 1979, saying:

> There are about 3,500 incidents involving chemicals per year from sources which have the potential of releasing significant quantities of hazardous substances either onto land or into water. Of these, it is estimated that about 50 percent of 1,700 spills would reach navigable waters * * * there are about 700 to 1,200 significant spills per year.

Some examples of the type of accidents that have resulted from spills and other nonwaste disposal incidents include:

PCB's a cancer-causing insulating fluid whose manufacture is now banned, leaked from an out-of-service transformer, entered the food chain and spread through 19 States and 2 foreign countries. Hundreds of thousands of hogs, chickens, turkeys, and a large quantity of other foodstuffs had to be destroyed.

One-third to one-half of the drinking water and irrigation wells in the San Joaquin Valley have been contaminated by a pesticide, DBCP. In sufficient amounts, this pesticide is known to cause sterility in males. It is suspected also of causing cancer.

From 1970 to 1977, the number of railroad transportation incidents involving hazardous substances increased 700 percent. Fatalities increased by 300 percent. A witness from the National Transportation Safety Board testified that 85 percent of those releases would have been prevented by the installation of relatively inexpensive safety devices.

Portions of Lakes Ontario and Erie have been closed to commercial fishing because of chemical contamination. The taking of coho salmon, stocked throughout the lakes to encourage a viable commercial and sport fishery, is banned because of chemical contamination.

Additional studies reveal that the spread of dangerous chemicals by spills and other incidents is presently a major environmental problem in this Nation:

The Congressional Research Service of the Library of Congress recently completed a catalog of natural resources lost or destroyed through releases of hazardous or toxic substances. It is almost 250 pages long, yet the Congressional Research Service says it is an incomplete effort. All of the reported incidents are essentially ancedotes.

In a recent report, the Department of Agriculture identified surface water basins which were contaminated by chemicals. These basins included practically the entire middle South.

The Surgeon General of the United States, in a report to the Committee on Environment and Public Works said that in his opinion toxic chemicals posed a major threat to public health in the United States. There is not a person in this room who does not carry body burdens of one or several of these substances, many of which have now been removed from the market because of their dangers.

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What I have just described is the scope of the toxics problem in the United States. The scope of not just inactive hazardous waste disposal sites, as tragic as Love Canal may be. Nor is the scope accidental spills into rivers, as disastrous as they may be. The problem is just as broad as the benefit.

I am not suggesting, nor have the members of my committee suggested, that chemicals be banned. What we are proposing is that we reduce the number of people who may become victims of chemical poisoning incidents.

In the last few days, we have been urged to adopt the two House-passed bills, H.R. 85 and H.R. 7020, and, thus, avoid the need for a conference or for further legislative action. Because so many persons have seriously advanced this proposition, I feel I should explain why this alternative is not acceptable to the Senator from Vermont.

For 3 years, the Senate has worked on a bill that would respond to emergencies caused by chemical poisons, and to seek to discourage the release of those chemicals into the environment. In many ways, the Senate bill is analogous to the natural disaster assistance programs we have enacted into law. When those natural disaster assistance laws were enacted, no one suggested that we should respond to floods, but not to earthquakes.

It makes no more sense to make that kind of distinction when dealing with chemical emergencies than it does when dealing with natural emergencies. But, that is what the House bills do. They cover two narrow areas—spills of 299 substances into navigable waters, and releases from inactive hazardous waste sites.

It may be instructive to review some actual chemical emergencies to judge whether they would have been covered if the two House bills—which nevertheless, were a step in the right direction, a good step—had been law when the emergencies occurred.

The release of Kepone into the James River, which posed a threat to the entire lower Chesapeake Bay, would not be covered by the House bills.

The Hudson River's contamination by PCB's would not be covered.

PCB's in Michigan, where damages exceeded $100 million, would not be covered.

DBCP, a pesticide known to cause sterility in males at high dosage levels, is found in more than one-third of the wells in the San Joaquin Valley. That condition would not be covered by the House bills.

TCE contaminates wells throughout Pennsylvania and many parts of New England. Ninety percent of those cases would not be covered.

PCB's were released a few months ago in an accident at a feed plant in Montana and the contamination found its way to 19 States and 2 foreign countries. That would not be covered.

Train derailments at Waverly, Tenn., and at Crestview, Fla., that killed and injured scores of people would not be covered; nor would the abandonment of 60,000 pounds of leaking and dangerous drums of phosphorus in Hagerstown, Md.

Those are just a few examples. But, they are the rule, not the exception. There is simply no good reason for us to respond to one

type of release of a poison, but not another. The test should not be whether poison was released into river water rather than into well water; or by toxic waste buried in the ground rather than toxic waste discharged to the ground. The test should be whether the poison was released. I assure you that the victim does not care to make those distinctions, nor should the Congress.

In addition to those two House bills, there are two other measures now before the Senate. The first is S. 1480, which was reported by the Committee on Environment and Public Works last summer. That bill, although ambitious, is not the draconian proposal that many have made it out to be. Nevertheless, I am a realist and know that many perceive it as punitive and unnecessarily rigorous. For that reason, Senator RANDOLPH and I introduced a fourth version last week. That is embodied in amendment 2623.

Fundamentally, amendment 2623 is a combination of the best of the three other bills, and an elimination of the worst, or at least the most controversial. Frankly, it eliminates 75 percent of what we were seeking in S. 1480. But knowing of the urgent need for legislation, we were willing to do that. That amendment is fairly simple. It provided a broad government response, analogous to the natural disaster legislation. It had strict liability provisions, but they were severely pared down. The size of the fund was reduced and, finally, we added a legislative veto of regulations.

I am afraid that there may still be some confusion in the minds of some Members as to what was deleted from S. 1480 in our original compromise, so I will enumerate the major ones.

We eliminated the Federal cause of action, including medical causation and statute of limitations.

We eliminated the term joint and several liability [Sec. 107].

We eliminated the scope of liability.

We added a third party defense.

We reduced the size of the fund from $4.1 billion for 6 years to $2.7 billion under the amendment of the Senator from North Carolina (Mr. HELMS) which has just been agreed to, over the 5-year period [Sec. 221 and 303].

We changed the ratio of contributions to 87.5 percent from industry and 12.5 percent from the public, and we added a legislative veto of regulations, a provision in none of the other bills [Sec. 305].

It became clear, soon after we introduced our original compromise amendment last week that there remained strong concern and opposition to even that measure.

So, late last week, this Senator and others dedicated to the idea that we must have superfund legislation in this session of Congress, began a new round of negotiations with Members who have an interest in the issue.

With the approval of the distinguished majority leader (Mr. BYRD of West Virginia) and with the strong support and cooperative spirit of the distinguished minority leader (Mr. BAKER), who made available his office as well as his leadership and guidance, we met in extended sessions with a number of Senators and their staffs.

During those meetings, a new compromise was shaped, and its text was printed in the RECORD of Friday, November 21, 1980.

That text will show that supporters of the legislation made some additional major concessions in the final effort to achieve a superfund bill this year.

Here are the additional major items deleted from our original compromise bill introduced last week:

We eliminated all third party compensation from the fund, including out-of-pocket medical expenses of victims of releases.

We placed a $50 million limit on compensation for each incident of natural resource damage [Sec. 107(e)(1)].

And finally, we reduced the size of the superfund to $1.6 billion for five years, as incorporated in the Helms amendment [Secs. 221 and 303].

We intend to offer this latest version as a substitute for S. 1480.

So the Senate now has four measures before it dealing with releases of toxic chemicals into the environment. Of course, the Senate has a fifth choice available to it and that is to pass no bill at all this year. I am sure that some persons will urge that course of action, arguing that action in the lameduck session is hasty and intemperate.

But how hasty is this?

This legislation has been reviewed formally by three different committees—Environment and Public Works, Commerce, and Finance—of the Senate. Collectively, they contain more than half of our Members. Two other committees—Governmental Affairs and Human Resources—have held hearings on the subject. Two years ago, the Senate passed a comparable bill, S. 2083. In this Congress, our committee has held 34 days of hearings and markups. In one way or another, 65 or 70 of the 100 Members of the Senate have been personally involved in the development of this legislation over a 3-year period, not including last week's negotiations. That does not count, at least in this Senator's book, as a rush to judgment.

I am a realist. I know that Members of the Senate find S. 1480 too ambitious. I believe they are mistaken. I believe 23 other Senators agree with me because they have cosponsored S. 1480. But the fact remains that at this time and in this place S. 1480 cannot be enacted. But this final compromise can.

Of course, the Senate can choose to pass H.R. 85 and H.R. 7020 under the pretext that they will solve a part of the problem in the United States. But the truth is that they will not. They will not help those along the James River in Virginia or the Hudson in New York. Or the thousands of farmers forced to slaughter their cattle because of chemical contamination. Or the millions forced to drink well water contaminated by poisonous chemicals. Or the small businesses forced into bankruptcy. Or the families desperate for medical care.

There are only two bills that will do that and only one of those is politically viable now. And whatever the Senate may do now or next year, I hope it chooses one of those two.

I know that Members of the Senate find S. 1480 too ambitious. I do hope, very strongly, that in the face of the major problems we face in this country in connection with releases of toxic substances into the environment that this afternoon the Senate will pass the bill now supported by the majority and minority leaders as well as the number of cosponsors who have joined with Senator RANDOLPH and myself in moving this bill forward. I yield the floor.

Mr. RANDOLPH. Mr. President, I ask for this further opportunity, and I shall be very brief.

I commend the constructive efforts of BOB STAFFORD for his analysis of the legislation that is now pending before us.

In my earlier remarks I discussed the legislation, and I gave specific instances about the situation in this country. Together I think they will form a background of information which will be very helpful to the membership as a whole, and, in fact, to the people of the country.

I underscore one thought that I perhaps should have expressed, because I offered legislation which became a part of the Senate reported bill.

I felt that that was very, very important that it be a part of the substitute which Senator STAFFORD and I have sponsored.

It is also present in the substitute: Postclosure liability [Sec. 107(k)]. This was an amendment which I offered at the full committee level and which was accepted. It dealt with adequate monitoring and maintenance of hazardous waste management facilities after closure.

One of the most perplexing problems in the area of hazardous waste disposal has been the scarcity of sites and the understandable reluctance of local communities to accept such sites with no guarantee that they will be adequately maintained, especially in the long-term sense [Sec. 111(j)]. Another associated problem is the difficulty of licensed site operators in obtaining long-term insurance as is required under the Solid Waste Disposal Act.

A separate postclosure liability fund [Sec. 232] would be established and would finance the long-term postclosure monitoring and maintenance necessary to protect human health and the environment. Financing is only available, I emphasize, to hazardous waste disposal facilities permitted and properly closed under subtitle C of the Solid Waste Disposal Act. The fund would also fully assume the liability of owners and operators of such permitted sites for any damages or cleanup costs which are incurred at the site after closure.

The fund is to be financed by taxes [Sec. 231] on each unit of hazardous waste which is received by a permitted or interim status facility which will remain at such facility after closure. Because such residual wastes pose the greatest postclosure health and environmental danger, it is appropriate that facilities handling such substances finance the fund. The Administrator of the Environmental Protection Agency is given the discretion to determine how the fees are to be imposed.

No permits have thus far been issued under subtitle C of the Solid Waste Disposal Act. It is logical to assume that facilities planning to close within a short time will not be applying for such permits. It is expected, therefore, that there will be a period of at least 5 years before this fund will be required, during which taxes will be collected by the Treasury. The postclosure liability fund is authorized to receive $200 million.

In order to determine the adequacy of the amount in the fund, the Environmental Protection Agency is directed to conduct a 3-year study, after which the committee will reexamine the matter.

I feel that creation of the postclosure liability fund offers a meaningful solution to the problem of siting new facilities which will be necessary to meet our hazardous waste management need. Assurance that funds will be readily available to clean up and restore problem facilities and to pay future claims for property damage and personal injury will reinforce public confidence. In addition, a postclosure liability fund will encourage private companies to attract the investment capital necessary to build the next generation of modern hazardous waste management facilities.

At the same time, as the tax is collected only on waste which will remain at the site, material which can be disposed of by other means, such as incineration, would not be subject to the tax. The committee considers this to be an incentive to industry for the development of additional technologies to dispose of hazardous wastes other than by burial.

I think this is a very important part of our measure.

We are not working on a time limit on this bill, Mr. President, but I would like the opportunity to yield to Senator MOYNIHAN, who will be speaking in his own behalf and as a member of our committee.

No member of our committee has been more constructive and more conscious of his and our obligation in these matters. Knowledgeable? Yes, he is certainly knowledgeable, and eloquent also.

(The following proceedings occurred earlier:)

Mr. STAFFORD. Mr. President, I had intended to follow the remarks of the chairman of the committee with my own opening remarks, but I shall at this point yield to the distinguished Senator from North Carolina [Mr. HELMS] for the purpose of offering an amendment. I ask unanimous consent that his amendment appear in the RECORD after my remarks so that it will not break the continuity between the chairman of the committee and myself.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1792

(Purpose: To terminate imposition of taxes when $1.38 billion has been raised ($1.6 billion minus $220 million authorized to be appropriated)

Mr. HELMS. Mr. President, I thank the Chair. Of course, I thank my able and distinguished friend from Vermont.

I sent an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1792:

At the end of section 303 omit the period and add the following: "or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1.38 billion, whichever occurs first. The Secretary of Treasury shall estimate when this level of $1.38 billion will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954."

Mr. HELMS. Mr. President, the distinguished majority leader and the distinguished minority leader have indicated that this

amendment, I believe, is acceptable to both of the distinguished floor managers of the bill.

The amendment would simply set a limit on the amount of the tax which could be collected under the terms of the bill. As we have discussed, the fund would be limited to $1.6 billion, which includes the Federal contribution and the proceeds to the tax.

Moreover, Mr. President, this amendment would specify that when $1.38 billion, or the industry share, has been collected, the Treasury would cease to collect further taxes in connection with this legislation.

I want to say, Mr. President, that I am deeply appreciative of my colleagues for their insistence and their acceptance of the amendment.

Mr. STAFFORD. Mr. President, it is the contemplation of my distinguished friend who has offered the amendment that the balance between $1.38 billion and $1.6 billion would be the Federal contribution of 12½ percent.

Mr. HELMS. Yes.

Mr. STAFFORD. So the sum agreed in total is $1.6 billion.

Mr. HELMS. The Senator is correct, and I thank him.

Mr. MOYNIHAN. Mr. President, will the Senator yield?

Mr. HELMS. Certainly.

Mr. MOYNIHAN. It has been my honor to serve on both the Committee on Environment and Public Works and on the Finance Committee, and so I have been involved in this legislation in both ways.

I would like to thank the Senator from North Carolina for his amendment. It is a prudent measure which lends an exactitude and a finite policy to this tax, and while I cannot speak, as it were, for the Finance Committee, I know my colleagues would welcome this and would be happy to support it.

Mr. HELMS. I thank the Senator.

Mr. RANDOLPH. Will the Senator yield to me?

Mr. HELMS. I would be delighted to yield to the Senator from West Virginia.

Mr. RANDOLPH. I do want to say to the Senator from North Carolina that I think he approached some of these matters with the realization that some of us, perhaps, in a sense are crusaders on this type of legislation. There are others who are more cautious. But you have worked with us, and I am ready, for the majority, to accept the cap, as it were, of $1.6 billion.

Mr. STAFFORD. Mr. President, if the Senator will yield further——

Mr. HELMS. I yield.

Mr. STAFFORD. I would like to express my appreciation to the Senator for his patience and his cooperation over a long time on Friday in working this out. For the minority, I am also prepared to accept the amendment.

Mr. HELMS. I thank the Senator. I can assure him it is always a privilege to be associated with him in any endeavor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (UP No. 1792) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Conclusion of earlier proceedings.)

Mr. MOYNIHAN. I thank our beloved chairman, the Senator from West Virginia.

Mr. President, I rise for a brief moment to do two things: First, to note that as we deal with what may be the most important environmental legislation in this decade, it is worth a moment's reflection on how it came about. Both the Senator from West Virginia, and his colleague, the distinguished Senator from Vermont, referred to the Love Canal in New York. The Senator from West Virginia observed that for 3 years he had been taking testimony in this matter. Those are exactly the 3 years from the time the situation in the Love Canal in the city of Niagara Falls was discovered.

Simply that the press might be able to report and that the public might know why we have moved toward this national system of response, I have had prepared a chronology of the events that followed the discovery of trichlorophenols and other hazardous substances in that neighborhood in mid-1977.

There are 71 discrete events—meetings, bills, petitions, reports—71 events over 3 years before; finally, there was an effective and reasonably complete response. Mr. President, that is what we are saving the other communities across this land from. That is why we are putting this bill through today.

Mr. President, as I know others wish to speak, I simply ask unanimous consent to have this chronology printed in the RECORD as evidence of our purpose. This is what we wish to avoid.

There being no objection, the chronology was ordered to be printed in the RECORD, as follows:

CHRONOLOGY OF EVENTS—LOVE CANAL DISPOSAL SITE, NIAGARA FALLS, N.Y.

Background: Love Canal, scene of the recent environmental emergency, is a 16-acre tract in the S.E. corner of the City of Niagara Falls, approximately ¼ mile from the Niagara River at the site's southern end.

1894: Love Canal is begun as a navigable power canal linking Lake Ontario and the Niagara River but is never completed.

1930's onward: The site is used as an industrial dumpsite for drummed chemical wastes, process sludges, fly ash, and municipal waste.

1947: Hooker Electrochemical Corporation purchases site for its own use.

1953: Hooker sells property to Niagara County Board of Education for $1.00 at the Board's request. The Board of Education subsequently sells parcels of land to the City and private citizens; homes and an elementary school are built adjacent to and over the now filled and covered canal.

Early 1970's: Residents notice chemical odors in basements and in the field over the covered canal. Children find "chunks" of chemicals.

Early 1976: New York State Department of Environmental Conservation (DEC) advised by USEPA Region II that the EPA, legally, has no authority over the problem. Can only offer technical assistance (T/A).

Early 1977: DEC feels that clean-up could not occur for 2–3 years due to legal liability questions.

Mid 1977: City of Niagara Falls hires Calspan Corp. to assess problem. Wells are put in and samples analyzed. Calspan concludes that additional data are needed to further identify the extent of the problem.

Oct. 1977: N.Y. State Department of Health (DOH) finds trichlorophenol and lindane analogues in pond water and requests EPA assistance. The Office of Solid Waste (OSW), Hazardous Waste Management Division, EPA, HQ, makes a commitment to provide sampling, analysis and investigative assistance.

Dec. 13, 1977: Administrator Costle, in a letter to Congressman LaFalce indicates that the EPA is preparing a monitoring study to determine what action needs to be taken.

Jan. 8, 1978: EPA, OSW staff and technical assistance contractor's representatives meet with EPA Region II and State DEC officials to develop a plan of action. Agreements reached: to complete water sampling, deep well drilling, analyses, shallow ground water evaluation and to make overall technical recommendations.

Feb. 1978: EPA Region II study of basement air detects broad range of chemicals.

Apr. 25, 1978: Dr. Robert P. Whalen, State Health Commissioner, says conditions at site represent serious threat to health and welfare and orders the removal of exposed chemicals, immediate initiation of health studies and other appropriate measures to protect health and environment.

Apr. 26, 1978: Top staff of State DOH and DEC meet in Albany with the EPA to develop a plan for detailed remedial measures.

May 15, 1978: EPA Region II concludes from air sampling of basements that high levels of toxic vapors are present and suggest potentially serious health risk.

May 21, 1978: State Health Department reveals plan to conduct short- and long-term medical studies involving residents of the Love Canal area.

Late June 1978: State Health Dept. begins medical and environmental investigations near the site including a house to house health survey, the taking of blood samples and the start of air quality testing.

June 28, 1978: Pentagon officials repeat their denial of any knowledge of records pertaining to possible disposal of U.S. Army wastes in the Love Canal at a meeting in Washington.

July 7, 1978: Health Department analysis of air samples collected from basements and other rooms of homes shows high level of toluene, chlorotoluene and chloroform.

July 14, 1978: Commissioner Whalen convenes meeting in Albany of all interested parties to report on epidemiologic findings and air sampling and to discuss the various engineering studies proposed. In attendance are representatives from the City of Niagara Falls, the State Health and Environmental Conservation Departments, Hooker Chemical Company (Congressman LaFalce's office), and consultants to EPA.

July 20, 1978: Governor Carey signs legislation granting additional emergency powers to the State Health Commissioner to deal with the Love Canal problem and appropriating $500,000 in State funds to conduct long-range health studies.

Aug. 2, 1978: N.Y. Commissioner of Health Whalen, acting under authority granted to him on July 20 by the State legislature, declares a state of emergency. He recommends the evacuation of pregnant women and children under 2 years in the first two "rings" (streets) of homes bordering the site.

Aug. 3, 1978: Governor Carey directs his staff to explore all forms of possible Federal assistance and telegraphs President Carter requesting Federal aid; he also enlists support of Senators Jacob Javits and Daniel Patrick Moynihan and Congressman LaFalce for legislative action to deal with the Love Canal situation.

Governor Carey directs his special interagency task force to find housing for families immediately affected by Dr. Whalen's order and provide additional financial assistance.

Aug. 4, 1978: Governor's Task Force opens relocation and health offices at 99th Street School.

DPM sends out a Dear Colleague letter to all Senators, asking support for DPM amendment to the Housing and Urban Development (HUD) appropriations bill to provide $4 million for the Love Canal.

Aug. 7, 1978: Governor Carey announces that State government will purchase homes identified by the task force as affected by the Love Canal chemicals.

President Carter declares a state of emergency and approves financial assistance requiring the State to match funds on a 50/50 basis. EPA and the Office of Management and Budget (OMB) meet to discuss possible Congressional supplemental appropriations of up to $4 million for Love Canal.

U.S. Senate approves by voice vote a "sense of Congress" amendment saying a serious environmental disaster had occurred and that Federal aid should be forthcoming.

Aug 8, 1978: EPA, OSW, HQ meets with the Administrator and staff of the Federal Disaster Assistance Administration (FDAA) to discuss emergency needs.

Aug 9, 1978: State officials meet at the White House with representatives of the President, Congress, and Federal agencies to discuss aid for Love Canal.

Governor Carey announces that State will evacuate all 236 families living on both sides of 97th and 99th Streets.

Aug. 16, 1978: State DEC Commissioner Peter A. Berle announces an investigation is underway which is expected to lead to court proceedings against those responsible for the Love Canal problem.

Aug. 18, 1978: EPA HQ and Regional officials meet in NY City to discuss the progress of on-site work.

State Health Department medical investigators and technicians from Roswell Park Memorial Institute in Buffalo complete two weeks of drawing blood samples, bringing the total to over 2,800 persons.

Aug. 29, 1978: 98 Love Canal families have been evacuated as of this date; 46 others have found suitable temporary housing and are ready to move. Task force relocation staff is working with 91 remaining families.

Sept. 12, 1978: EPA Headquarters staff, grants staff and Region II staff meet in Albany with NYS Department of Health and Department of Environmental Conservation staff to assist in preparation of grants application package.

Sept. 30, 1978: President Carter signs HUD appropriations bill containing $4 million in appropriations for EPA targeted specifically for the Love Canal.

Oct. 5, 1978: The state gives final approval for the beginning of Love Canal remedial construction.

Oct. 26, 1978: The EPA announces it is making available $15 million to help states finance programs for safe handling and disposal of hazardous wastes.

Oct. 28, 1978: State Health Department agrees to permit 20 families outside of the evacuated "strip" to appeal the rejection of their request for evacuation.

Oct. 30, 1978: the New York State Office of Disaster Preparedness will "seek a top level policy decision" from Washington. The Federal Disaster Assistance Administration rejects all but about 10 percent of the State's claims, saying that President Carter insisted that the State carry the major portion of the financial burden of the Canal.

Feb. 9, 1979: State Health Commissioner David Axelrod recommends that all pregnant women and children under two years of age leave the six block area of the Love Canal.

Representative John LaFalce meets with William Wilcox, head of the Federal Disaster Assistance Administration. His requests include federal reimbursement to New York State for relocation of families and reconsideration of the FDAA's earlier decision not to assist in remedial construction.

Apr. 11, 1979: Several Hooker executives testify before the House Commerce investigation subcommittee. They said Hooker was aware that the health of residents was threatened more than 20 years ago.

Apr. 23, 1979: Engineering consultants estimate that it will cost more than $150 million for Hooker Chemical to clean up the waste disposal dumps.

May 1, 1979: EPA implements a forceful, multifaceted program for detection, measurement, cleanup and enforcement against the problems caused by hazardous wastes.

July 26, 1979: HEW Secretary Joseph Califano, Jr. announces that residents of the unevacuated areas surrounding Love Canal have been exposed to potential health risks. He asks HEW scientists to review the general health risks posed by chemical dumps.

Aug. 21, 1979: State health officials confirm the presence at the Love Canal of Dioxin, an extremely toxic chemical with no known antidote.

Sept. 5, 1979: 300 people move out of their homes because of odors from the remedial work and ask New York State to find new housing for them. New York State says that the residents need a certificate from a M.D. stating that their health will be endangered if they remain in their homes.

Oct. 3, 1979: State Supreme Court Justice Joseph Kuszynski rejects a $2.5 billion class-action suit. It is ruled out by a technicality, but does not prevent further individual lawsuits on the case.

Oct. 14, 1979: The House Commerce oversight subcommittee recommends the relocation of all residents living in the wet areas near the canal.

Oct. 24, 1979: State officials say the discovery of construction flaws in the Love Canal remedial project is delaying completion of the project.

Oct. 26, 1979: A report by the State Department of Environmental Conservation says that the health and safety of residents may be at stake unless drastic steps are taken to handle the crisis.

October 27, 1979: A multi-billion dollar lawsuit alleging fraud, injury to personal health and property damage is served against Hooker Chemical on behalf of 900 Love Canal area residents.

Nov. 1-6, 1979: Governor Carey requests and receives $5 million in state aid to assist 550 Love Canal area residents who want to leave the Canal.

Nov. 9, 1979: Representative LaFalce writes President Carter complaining about the lack of federal agency coordination and action on Love Canal.

Nov. 20, 1979: EPA said that there is virtually no increase in the cancer risk to persons living in the Love Canal area, based on 1978 data.

Dec. 20, 1979: The U.S. Department of Justice, after a year-long investigation, files four suits against Hooker totalling $117 million for four sites in Niagara Falls, including the Love Canal.

Jan. 3, 1980: Governor Carey writes to President Carter asking for immediate federal assistance and a review of applications for $20 million in federal aid that were rejected.

May 17, 1980: EPA releases a study stating that chromosome damage exists in 11 of 36 Love Canal residents studied and says that relocation of 710 additional families may be necessary.

May 19, 1980: DPM meets with Rep. John LaFalce, Stuart Eizenstat and representatives of four federal agencies to discuss federal handling of Love Canal. Moynihan and LaFalce call for comprehensive health study and organized federal response.

Angry homeowners lock two federal environmental officials in the office of Love Canal Homeowners Association for five hours, demanding an immediate evacuation of their neighborhood.

Rep. LaFalce speaks directly with President Carter to discuss federal assistance for Love Canal.

May 20, 1980: Carter Administration meets to discuss the federal government's role in the possible evacuation. The Federal Emergency Management Agency (FEMA) says that it will not participate in permanent relocation.

May 21, 1980: Health and Human Services (HHS) releases the report of an HHS panel of outside experts which reviews the EPA chromosome study. The review panel concludes that this particular study does not provide definitive evidence for judging whether or not there has been demonstrated health damage at Love Canal. President Carter declares a federal emergency at Love Canal and orders the federal government and New York state jointly to begin the immediate temporary relocation of 710 families from the Niagara Falls area. Governor Hugh Carey calls for permanent relocation and the start of a valid and scientifically reliable study.

May 27, 1980: The federal government asks in federal court that the state health department be ordered to turn over 50,000 pages of data on Love Canal residents.

May 28, 1980: Residents indicate that they will not take part in health tests until the government agrees to buy the homes of those wishing permanent relocation.

May 31, 1980: Dr. Beverly Paigen, a research scientist at Roswell Park Memorial Institute announces medical testing to be done independently of EPA tests. Studies are to include: growth of children, nerve damage and the sperm of males.

June 1, 1980: New York State Assembly speaker Stanley Fink commissions an investigation into the toxic and hazardous contamination in Niagara County, based on preliminary evidence indicating U.S. government disposal of chemical warfare manufacture waste products.

June 3, 1980: Love Canal leaders meet with the EPA announces that a comprehensive environment study will commence within a few days but that the overall medical results will not be available for a year.

June 4, 1980: EPA announces a two phase study including comprehensive medical examinations for Niagara Falls area residents and monitoring of environmental damage. The study will last six months. Statement says that federal government does not have authority to buy homes but that EPA will help review housing and community development programs to identify existing resources.

June 5, 1980: Governor Carey appoints a panel of six doctors to review for 30 days every medical study ever done of the Love Canal.

June 6, 1980: Senator Kennedy chairs hearing before the Committee on Labor and Human Resources and Committee on the Judiciary on hazardous waste disposal and hears testimony from two Love Canal residents.

June 11, 1980: A Federal court judge orders the state of New York added to the Department of Justice's law suit against Hooker.

June 17, 1980: Senators Moynihan and Javits send a Dear Colleague to all other Senators asking support for their amendment to H.R. 7325, the Supplemental Appropriations bill, which would enable the President to carry out permanent relocation at the Love Canal.

June 18, 1980: Governor Carey signs a bill creating the Love Canal Revitalization Agency and providing $5 million in state appropriations to relocate families permanently and to continue clean-up. He also calls for $20 million in federal loans to New York State for this effort. Under the Carey proposal, families would be com-

pensated for the equity value of their homes and would be eligible for 30 year 3 percent loans up to a maximum of $55,000 to purchase new homes.

July 2, 1980: Congress passes the Supplemental Appropriations bill which includes an amendment by Senators Javits and Moynihan. The amendment gives the President the authority to order permanent relocation of Love Canal residents.

July 8, 1980: President signs Supplemental Appropriations bill with Javits/Moynihan amendment.

July 22, 1980: 548 applications received for relocation of which 200 families have been relocated in motels and 143 families in private accommodations. To date, approximately $1.7 million has been spent on this program.

August 8, 1980: EPA begins environmental monitoring study. Air, soil and water samples will be tested, at a cost of $5.4 million.

September 9, 1980: 306 families have been relocated outside the Love Canal area.

October 1, 1980: President Carter signs agreement with Governor Carey that implements the delivery of $15 million through FEMA for the purchase of homes in Love Canal. Authority was granted under the Moynihan-Javits amendment.

Mr. MOYNIHAN. Finally, Mr. President, I must make one further remark. We know that there is a transition taking place in the leadership of this body and it is, in fact, embodied in this measure. The bill that we are soon to adopt was introduced by Mr. BAKER for Mr. STAFFORD, for himself, Mr. RANDOLPH, Mr. MITCHELL, Mr. MOYNIHAN, Mr. BRADLEY, and others. It is, in fact, Mr. BAKER's bill—having been introduced by Mr. STAFFORD and Mr. RANDOLPH prior to that. It could never be on the floor without the unfailing informed support of the Senator from Kansas (Mr. DOLE).

Mr. President, if there is an augury of what we may hope for in the next Congress under the leadership of Mr. BAKER, Mr. STAFFORD, and Mr. DOLE, it is on the floor today and it is a happy one. We could not be doing this were it not for the determined concern of the present minority that it should be done and their finding the time, giving the support. These agreements were reached in the minority leader's office, where a great many more such agreements will be reached in the years ahead. I take it a very handsome omen for the American Nation and for this body that this has moved so well.

Mr. President, I express my gratitude to the Senator from Vermont, the Senator from Kansas, and the Senator from Tennessee and, of course, I know the sometime and fast evanescing majority wish to salute those across the aisle and thank them for it.

I thank my beloved chairman for yielding the floor to me.

Mr. RANDOLPH. Mr. President, another Member of the Senate who has given hours and hours, especially in recent days, to this subject matter, although he was certainly very, very cognizant of what had been happening, is the capable Senator from New Jersey (Mr. BRADLEY). He has been faced, and I mention it very briefly, with a situation which centers in Elizabeth, N.J. For his efforts, even before he speaks, as I yield to him, I again wish to say how much we have gained by his counsel in these matters.

Mr. BRADLEY. Mr. President, I thank the distinguished chairman of the Committee on Environment and Public Works for his kind remarks, and also those of my colleague from across the river, New York (Mr. MOYNIHAN).

Mr. President, the paramount environmental problem facing us now is the need to correct damage done over many years by improper hazardous waste disposal and hazardous waste spills.

In almost every State in the country, there are known incidents of either abandoned or inactive sites which threaten municipal water supplies, have caused or threaten to cause agricultural or commercial fishing losses, and whose potential explosive nature even threaten entire communities. For every site that has already been identified, many more await detection and examination.

A survey that I conducted of local officials and investigations by the State of New Jersey have already uncovered 235 such sites in my State which require attention. New Jersey has been in the forefront in identifying potential problems, establishing its own superfund to assist in cleanups and initiating a manifest system long before Congress acted. The dimensions of the problem are so great, however, that no single State can afford to make its State safe for its citizens.

Let me describe an example. The Chemical Control Corp., a bankrupt toxic waste disposal facility in Elizabeth, N.J., was found to have accepted hazardous waste illegally and failed to dispose of them. On the date New Jersey sought receivership of that facility, some 40,000 to 50,000 drums, containing unidentified hazardous wastes in various stages of decay and exposed to the elements, were piled up outside. A building on the site contained drums stored up to the roof.

In addition to such flammable combinations as aniline and nitric acid, State officials found practically every variety of toxic waste. The State had to win a lengthy legal battle before going in to clean up the site. Even with assistance from New Jersey's Chemical Industry Council, the State could identify and clear away only a few thousand barrels—including 500 pounds of TNT, nitroglycerin and picric acid, as well as quantities of phosgene nerve gas before the site exploded in flames on the eve of Earth Day this year.

The current estimate of cleanup costs of this site by the State is between $10 and $15 million. But we were lucky. The fire burned hot enough, the wind was cooperative and we avoided what could have been a massive disaster, with many fatalities, in the most densely populated area of our Nation.

Other sites and spills in my State and the States of my colleagues require urgent action.

Our attention to these problems today shows that government and responsible private industry can work together to deal with past abuses and move on to insure that the past is not prolog. I am pleased to say that government-industry leaders recognize that this legislation is important to them to restore public confidence in them and us.

Mr. President, although I do not serve on the Environment and Public Works Committee, I closely followed work on this legislation and participated, where possible, because of its impact on my State, New Jersey. All of the members of that committee are to be commended for their efforts to bring this bill to the floor, as well as the Senators who were involved in the compromise negotiations of last week. I believe they have demonstrated sensitivity to the economic problems of industry while attempting to confront a serious health risk. The measure before us is a substantial compromise from the original proposal which I cosponsored. The differences between this legislation and that passed by the House are not insurmountable. I

believe a conference could resolve them quickly to insure final action this year.

Mr. President, the significant accomplishments of this legislation are clear.

First, a single mechanism is established to permit Government to pay cleanup costs resulting from releases of hazardous substances into the environment—air, water, land [Sec. 111]. In cases where the liable party is unknown, unable, or unwilling to respond, Government response would not have to wait for a determination of whether the release was into surface water, ground water, land or air [Sec. 104]. Restoring public safety will be the first concern and it will not be delayed by protracted legal proceedings. Released poisons could be cleaned up and contained, contaminated water supplies could be replaced, and people who were exposed could receive medical examinations.

Mr. President, I cannot emphasize enough the importance of this ability to respond. Over 6 months before the Chemical Control Corp. exploded into flames, I requested that the Coast Guard intervene to try to clean up the waterway.

The Coast Guard maintained they only could act under the provisons of section 311 of the Clean Water Act. They did not believe, from their analysis, that, indeed, there was leakage into the stream next to the Chemical Control Corp. Therefore, there was no response because there was no other provision of law at the Federal level which would have allowed a response.

When the fire hit on the eve of Earth Day and the explosion billowed flames hundreds of feet into the air, it was discovered that there was an underground pipe leading into the waterway which the Coast Guard had ignored.

So, the first thing this bill achieves is a mechanism that will permit immediate response to clean up a danger when it is discovered.

Second, the legislation provides for emergency response without creating an elaborate regulatory bureaucracy.

Third, the cost of establishing the fund is distributed among producers of hazardous substances and the taxpayers [Sec. 211]. While seven-eighths of the costs are levied on producers, their share will actually amount to less than 50 percent of the fund because they will be able to deduct this tax from other industry tax liability. Although it has been argued that these costs are likely to be passed on to consumers, an analysis by the Congressional Budget Office indicates the consumer impact will be negligible. Moreover, the real cost of production includes safe disposal, and all of us should recognize that.

We cannot afford to lose this opportunity after coming so close to resolution of the issues involved.

Virtually no one opposes the need for a cleanup fund.

The major industry groups indicated their willingness to accept the two House-passed bills many months ago.

The differences between those bills and the Senate compromise developed so painstakingly are minor except in one important area—the scope of releases covered. A spill of hazardous wastes is no less dangerous to public health when it occurs on a turnpike or the George Washington Bridge than it would be in the Atlantic

Ocean. In the face of imminent peril to the public, Government should not have to determine first whether the cause of the problem is a spill, a leaking pipe, or buried toxic substances leaking into a water supply. It should be able to respond. The comprehensive scope of the Senate bill makes it far superior to the more narrow House approach.

This legislation is not as extensive as I would like, but it is an important beginning. I hope the House will concur speedily in our amendments and that we will have a law enacted this year.

Mr. President, perhaps I have had a little more experience with this, as the chairman stated, because toxic waste sites in New Jersey are so prevalent, perhaps because the chemical industry in New Jersey is the oldest in the country. Although we slipped from the No. 1 chemistry State to the No. 4 chemistry State, the residue of all those years still remains in 233 toxic waste sites in the State of New Jersey.

But across this country, Mr. President, there is a toxic time bomb ticking. It is ticking and it leads, if not explosions and fatalities in an immediate sense, to a slow death of being exposed to toxic chemicals over many years.

If the Government has one responsibility, it has many. But, certainly, one of them is to protect the public health and the public safety.

I think any Senator would agree that that is part of the solemn pledge he took when he became a Senator, to do what he can to protect the public health and the public safety.

Mr. President, for a long and assorted set of reasons and complicated explanations, we have gotten to the point where we are today, where there are thousands of toxic waste sites, time bombs ticking across this land, and it is imperative that we respond to those threats to our health and safety.

Mr. President, I think this compromise at least begins in that direction. With it we can, within the next 6 months to a year, have funds available for the cleanup of these dangers across this country.

I urge my colleagues to join with the leadership in opposing all amendments and coming to a quick resolution of this bill so that we can go to conference and get a final bill before this session of Congress is over.

Mr. TSONGAS. Mr. President, I rise in strong support of the compromise offered by Senators STAFFORD and RANDOLPH. The need for an emergency Federal response to deal with abandoned waste sites and chemical spills is real, and it is immediate. Some chemical companies have shown a callous disregard for human health and the environment in disposing of their wastes, and the result has been immense pain and suffering to persons living near waste sites and irreparable losses of natural resources.

The tragedy of Love Canal with its story of birth defects, miscarriages, and liver abnormalities from chemical exposure is the best known case, but there are other examples as well. They include pollution of the water supply of over 300,000 people in Iowa, discovery of up to 30,000 leaking barrels of chemical waste in Kentucky, and contamination of ground water supplies from the dumping of pesticide wastes in Tennessee.

For purposes of this act, Congress declares that manufacture, use, transportation, treatment, storage, disposal, and release of hazardous substances are ultrahazardous activities. This is not a new concept. Strict liability for ultrahazardous activities has been accepted and applied throughout the United States. It applies to the transportation of hazardous substances, the spraying of hazardous substances, and the keeping of explosives and flammables. The chemical industry has complained it does not know what it will be liable for, but strict liability is triggered only for releases of substances which have been previously designated hazardous by EPA **[Secs. 101(14) and 107].**

The Stafford-Randolph compromise does not create new costs. It puts the costs on the sector most responsible for pollution and which benefits most from chemical production instead of on the victim or on the Government, as it stands now **[Sec. 211].**

The Stafford-Randolph compromise envisions a 5-year fund of an estimated $1.6 billion. Industry has argued that the $1.2 billion authorized under H.R. 7020 is more than adequate. But in light of EPA's estimated costs of cleanup and containment, $1.2 billion is definitely not adequate. EPA estimates that remedial action at Love Canal alone will cost $110 million. It projects the average cleanup cost per site at $3 to $6 million and estimates costs for 40 actions filed so far by the Hazardous Waste Task Force at $330 to $590 million.

The Chemical Manufacturers Association has opposed taxes on feedstocks and proposes instead taxes on end products. There are several advantages to taxes on the 46 building blocks out of which all wastes and hazardous substances are made. First, it is fairer. A tax imposed at this early stage in the chain of production, distribution, consumption, and disposal will be more evenly passed on to all industrial sectors which produce and consume hazardous substances and generate hazardous wastes. Second, it is simpler to administer. Instead of taxing 260,000 generators, a tax would be levied on fewer than 1,000 sources.

CMA has argued that the fund would have a negative effect on the domestic chemical industry and on the Nation's economy. But the Congressional Budget Office, in reviewing the original bill, which proposed a fund of $4 billion, concluded that the effect on prices and production volumes of final products would be small and should have at most a very small effect on GNP, the price level, or unemployment. Again, with the Stafford-Randolph compromise, we are talking about a fund of only $1.6 billion.

Lastly, I would like to remind the chemical industry about two polls it would undoubtedly rather forget. One survey, prepared by Cambridge Reports Inc., for the Chemical Manufacturers Association, was designed to poll the attitudes of politically active individuals; chemical industry neighbors, and opinion leaders in government, education, and the media on attitudes toward the industry. These were the results. The issue most on the minds of these people as far as the chemical industry was concerned was chemical waste disposal. As many as 93 percent of those identified as politically active said they were either "extremely" or "very concerned" about the disposal of waste material from chemical plants. Most people sampled did not believe the industry is properly concerned.

In fact, many people surveyed felt that waste disposal was industry's least concern.

In a recent poll of the general population conducted for Union Carbide, a substantial majority of Americans favor strengthening laws protecting workers and consumers and more rigorous control over water and air pollution. These poll results are significant because 9 out of 10 Americans believe the average product costs more because of regulation. These surveys indicate that the American people want action on this legislation. The Stafford-Randolph compromise goes far to address industry concerns with S. 1480 as reported. I strongly urge my colleagues to respond to the widespread and deep public concern over waste disposal by backing the Stafford-Randolph compromise. It is our best chance of reducing the risks to public health and welfare from hazardous waste mismanagement.

Mr. President, I would like to engage in a colloquy, if I might, with the Senator from Kentucky.

Large quantities of hazardous materials are transported by motor carriers [Sec. 306(c)], and it is believed that the bulk of hazardous wastes is being transported by carriers that do not have appropriate authority. Carriers act with impunity because the current penalty under the Interstate Commerce Act for operating without authority is only $500. This is insufficient deterrent in light of the potentially large profits to be made by carriers transporting hazardous wastes illegally. The Stafford-Randolph compromise contains my recommendation that civil penalties for transporting hazardous wastes without a license be increased from a totally inadequate $500 to $20,000. Stiff civil penalties for operating without authority provide a strong weapon for the Commission in its efforts to reduce unlawful transportation of hazardous wastes.

However, much more needs to be done to deal with illegal transport and disposal of wastes. I am particularly concerned with the problem of "midnight dumpers" who dispose of toxic chemicals and hazardous materials in quarries, in streams, in forests, or spread them on open roads. Another tactic is to fill trucks with drums of these materials and abandon them in places where they will not be immediately discovered. Currently this problem is particularly severe in New England—including my own State of Massachusetts—New York, New Jersey, and Louisiana. The practice is likely to spread to other States, however, now that EPA's manifest system is in effect to track hazardous waste shipments and attempt to force legal disposal.

In my view, we need to strengthen EPA's inspection powers under the Resource Conservation and Recovery Act, to clarify that the inspection authority extends to vehicles, and permit EPA to delegate its inspection authority to other Federal agencies, such as the Department of Transportation. I would also propose amending RCRA to provide for forfeiture of any vehicle used in connection with criminal acts under this statute. I believe it would also be useful to provide the Interstate Commerce Commission with authority to file independent actions in rem against rolling stock to recover fines.

Actions in these areas should be taken as soon as possible. It is my understanding that the Commerce Committee is committed to

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examining these issues at the earliest possible time in the next session. Is that correct?

Mr. FORD. Yes. We share the Senator's concern with the problem of the "midnight dumpers" and the need to provide appropriate enforcement tools. The new EPA regulations, which went into effect just last week, should help in identification of hazardous waste shipments. The Commerce Committee will be looking at the problems you have identified—to determine whether changes are needed in the Hazardous Materials Transportation Act or the provisions of 49 U.S.C. governing transportation in interstate commerce.

I understand this matter has been discussed with Senator CANNON, the chairman of the Commerce Committee. He has authorized me to agree that hearings on legislative changes in this area will be a high priority item for the Commerce Committee in the next Congress.

Mr. TSONGAS. I thank the Senator from Kentucky for his response in this colloquy. I will not introduce the amendments previously scheduled. I commend the Senator from Vermont and the Senator from West Virginia for their efforts.

Mr. RANDOLPH. Mr. President, the Senator from Massachusetts (Mr. TSONGAS), on many occasions, has brought to the attention of his colleagues the importance of strengthening, in realistic ways the environmental quality of this country. He does it again today, as he brings to our attention matters that concern him, and his support for the substitute is very helpful.

Mr. President, we have a member of our committee who came on the committee at the time that the former Senator from Maine, Mr. Muskie, went from the Hill to the administration, to serve as Secretary of State. Senator MITCHELL has come to our committee, to succeed Senator Muskie, and both are from the same State.

Senator MITCHELL has been most painstaking. He is a man with a background of judicial experience, and he has said constantly that it is not so much what this measure does but what it does not do.

I simply make this comment in commendation as he seeks the floor and is recognized.

Mr. MITCHELL. Mr. President, I thank the chairman, the distinguished Senator from West Virginia, and the ranking minority member and soon to be chairman, the Senator from Vermont (Mr. STAFFORD) for their efforts in this matter.

One of my first activities upon coming to the Senate was to participate, as a member of the Committee on Environment and Public Works, in the drafting of the superfund bill. I was concerned about the magnitude of the hazardous waste threat to this country and the extent of human tragedy caused by such wastes.

In S. 1480, the bill reported from the Committee on Environment and Public Works, we have a comprehensive, yet reasonable answer to the chemical contamination that continues at this very moment.

S. 1480 is a reasonable bill. It is an equitable bill. But we are in final days of this session, and faced with the threat of a filibuster by the opponents of S. 1480.

So S. 1480 cannot be enacted this year. The choice is between this compromise and no bill at all. While I will vote for the bill now before us, with some reluctance, I feel a responsibility to tell my colleagues and my constituents why this measure cannot honestly be called a substitute for S. 1480.

The bill before us is a meaningful first step to respond to the severe threats posed by spills, leaks and releases of hazardous substances, as well as toxic dumpsites.

Authority is provided for immediate cleanup of releases of toxic chemicals into the environment and for the restoration of natural resources damaged by such releases **[Secs. 104 and 111]**.

A fund of $1.6 billion is established to finance these remedial actions. The fund is financed primarily through industry contributions **[Secs. 211 and 221]**.

A party may also be held strictly liable for the cleanup of chemical contamination and natural resource damage for which he is responsible **[Sec. 107]**.

I do not minimize the significance of this legislation.

But this bill is deficient because while it provides for the cleanup of places, and compensation for damage to things, it provides nothing for what is the most important part of the problem: injury to people.

The guiding principle of those who wrote S. 1480 was that those found responsible for harm caused by chemical contamination should pay for the costs of that harm. We are abandoning that principle here today when the damage involved is to a person.

As we all know, hazardous substances have wide-ranging effects including illness, birth defects, even death, as well as destruction of natural resources. Under S. 1480, a party could be held responsible for those wide-ranging effects, specifically:

Cleanup of a release of a toxic substance into the air, water, or land:

Out-of-pocket medical expenses of victims exposed to chemical poisons;

Compensation for lost wages or other personal income;

Capital loss due to the destruction of agricultural products from chemical contamination;

Loss to processors of fish or seafood from the release of a hazardous material;

Loss or damage to natural resources owned by the Federal or State governments, including the cost of restoring injured or destroyed natural resources; and

Costs of expert witness fees, health studies, and diagnostic examinations.

But the bill before us permits use of the fund only for cleanup of hazardous waste sites or spills and to compensate the Federal or State governments for damage to natural resources.

No longer can a victim of chemical poisoning seek from the fund out-of-pocket medical expenses for an illness resulting from the action or inaction of another party. Indeed, as to the fund a guilty party can not be held accountable for any damage it has inflicted on a person.

Under this bill, if a toxic waste discharge injures both a tree and a person, the tree's owner, if it is a government, can promptly re-

cover from the fund for the cost of repairing the damage, but the person cannot. In effect, at least as to the superfund, it's all right to kill people, but not trees.

In this bill, we are telling the people of this country that under our value system a property interest is worth compensating but human life is not. Let me illustrate this more specifically: Suppose a little girl plays in a State park. She is exposed to a chemical leaching into the park from a dumpsite, and she develops symptoms associated with that chemical, such as kidney disease, or cancer.

The trees in the park die from exposure to this same chemical.

Under the bill before us, the State may be fully reimbursed from the fund from the cost of restoring new trees to its park. But what about the little girl? We have given her no recourse from the fund. She cannot recover the money it will take to give her proper medical care. She cannot be reimbursed under this bill for restoration of her kidneys or her nervous system or her eyesight.

Neither logic nor compassion, good government nor commonsense compel this result. It is simply a failure of will on the part of Congress to deal with what is the most serious part of the problem—injuries to persons.

Of course the response is that the injured person still has a legal cause of action against the party causing the injury. To that I ask: If such a course is satisfactory for injured persons, why are we permitting the direct recovery from the fund for injury to natural resources? The answer, obviously, is that private causes of action are agonizingly slow and inordinately expensive. It takes years, many years, and dollars, many thousands of dollars, to pursue one of these cases to a final determination through the courts. Those who discharge wastes know this, and the consequence is legal guerrilla warfare in which the objective is to force the other party to settle early. So we do not want damage to natural resources to await the workings of that process; we want prompt, full compensation in such cases so we can replant trees in the park and so we permit claims against the fund for damage to natural resources.

But if this cause of action is unacceptable to the Senate for governments whose natural resources are damaged, why is it acceptable for people who have been injured or killed?

By what standard of justice or decency is damage to property more important than damage to persons?

The only answer I have heard so far is the fear that a lot of phony claims will be filed. I note first that it says something about the judgment of Congress as to the morality of the American people that we are unwilling to permit prompt compensation of some admittedly valid claims because we fear that this may stimulate other fraudulent claims.

While there may be evidence on which to base an adverse judgment by the people on Congress, I am not certain that the contrary is true. In any event no such evidence has been presented. All that has been argued is the vague fear that creation of this fund will so stimulate the larcenous tendencies of the American people that we dare not give anyone access to the fund for personal injury.

Perhaps this is true, although I hope it is not. But at the least, if that is the basis for our decision, the argument should be made with such evidence as is available to support it.

Our failure to provide compensation from the fund for persons who are injured is even less defensible when we recall that S. 1480 provided liability only for out-of-pocket medical expenses. There would have been no compensation for the pain and suffering of an individual, or for the psychological damage he or she might sustain, or for the ultimate loss, death.

Having made the judgment that property is more important than persons, none of us here should delude ourselves or the people of this country about what we have done. Most particularly, we must not delude the thousands of people who are the victims, who are waiting for our help.

Many of these victims have told their tragedies publicly, and I shall recount some of them now.

We all know that an environmental disaster occured at Love Canal, in Niagara Falls, N.Y. But listen to the personal account of this tragedy by a mother who has lived by Love Canal for more than 13 years; and this is a brief excerpt from some of her testimony before this Senate:

My name is Ann Hillis. I am a wife, a mother, I live in Niagara Falls, New York. I also live close to a "dump". A dump called Love Canal. I don't want to live there anymore. I hate Love Canal, I hate my life at Love Canal. It's a strange life that I lead now, it is filled with disruption, frustrations, sleepless nights and a grip of fear that only those in similar situations can understand. We've lived in the home for 13½ years. We lost a child there.

I want to tell you about my son. He's 10, he's a bright boy, he has a 91 average in school. As a baby he never required much sleep. He was put on a sedative at about age 7 months to about 18 months. He developed rashes, frequent bouts of diarrhea and respiratory problems—always respiratory problems.

His first year at 99th Street School, built over part of Love Canal, he was admitted to the hospital very ill. The diagnosis was acute gastroenteritis, cause unknown. After that, more respiratory infections and tonsilitis. At age 6 the tonsils and adenoids were removed but the respiratory problems did not improve and he developed asthma.

He started school last September, 7 miles across town. His school was closed due to chemicals, chemicals in the air and chemicals on the playground where he and all the children played. He started the school year off with an abscess in his nose and he was on antibiotics. He had repeated respiratory infections and bouts of asthma. By this time we the people were well aware of Love Canal as were our children. My son went into a depression, withdrawing from school, from his mother and his father, and he begged to leave. I promised that we would soon. One night last winter I got up and I looked in on him and his bed was empty. I looked all over and it was 2 a.m. I heard a cry from under the couch. My son was under there with his knees drawn up to his chin. I asked him to come out and tell me what was wrong, and his reply was, "I want to die. I don't want to live here any more. I know you will be sick again and I will be sick again."

Ann Hillis does not understand why a chemical company dumped over 80 different deadly chemicals into Love Canal. She says:

They produce the chemicals. Surely they have some idea of what chemicals can do. The people of Love Canal now know what they have done. They have produced children with extra fingers, extra toes, double rows of teeth, cleft palate, enlarged hearts, vision and hearing impairment and retardation.

This woman came to Washington in desperation and asked us to help her. With this bill, we have failed her and countless other victims of chemical poisoning.

And who are some of the other victims? One of them was a little girl named "Andrea." She liked to play on a farm in Moscow Mills, Mo. One day a truck drove up and sprayed the barn floor with what the driver said was salvaged motor oil, to keep the dust from blowing around. Three days later, the birds began to die. Andrea was later hospitalized with a bladder disease, inflamed kidneys, nausea, and headaches. She had actually been exposed to the deadly chemical dioxin. This was one company's way of disposing of contaminated wastes. We have not helped victims like Andrea in this bill, either.

We have not helped the people of Toone, Tenn., who drank from wells polluted with high levels of extremely toxic chemicals.

We have not helped the 750 families of Gray, Maine, who drank chemically polluted ground water for 4 years.

We have not helped the people of Jackson Township, N.J., where water supplies were contaminated by illegally dumped chemicals and residents have suffered premature deaths, kidney malfunctions and removals, and rashes.

We have not helped the people in Hopewell, Va., who worked in the plant that manufactured kepone, who now suffer from cancer, motor disorders, and neurological damage.

We have not helped the people in North Carolina who were exposed to PCB's illegally sprayed along 210 miles of roadway, and which can cause cancer and birth defects.

We have not helped the people who live around the Rocky Mountain Arsenal in Colorado, where the drinking water supply has been contaminated by the dumping of pesticides known to affect the central nervous system by causing headache, blurred vision, dizziness, involuntary muscular movements, sweating, insomnia, nausea, convulsions, loss of consciousness, disorientation, personality changes, and loss of memory.

Mr. President, people have been tragically harmed like this in virtually every State of the Union.

We have the opportunity to help them, not make them whole, but at least provide them with compensation for their out-of-pocket medical expenses, that is all, compensation for their out-of-pocket medical expenses, and we have not done that. Instead we have apparently decided that, as the chemical industry says, toxic chemicals are a societal problem, and society-at-large should be paid for them.

This bill represents a beginning. But we have far to go to fulfill our duty to the people we represent.

I for one intend to exert every effort to remedy this irrational elevation of things over people in the next Congress.

I hope my colleagues will join me in that effort. I thank the Chair and I thank the chairman and Senator STAFFORD.

Mr. STAFFORD. Mr. President, I want to thank the distinguished Senator from Maine, the able Senator from Maine—my senior colleague and good friend, the chairman of the committee, would say—for all of his most learned and thorough participation in the struggle to bring the bill we now have before us to the Senate.

I recognize, with the Senator from Maine, the defects in the present compromise. But, as I said earlier, the Senator from Ver-

mont and the Senator from West Virginia believe in the art of the possible, and we are trying to do as much as we possibly can here in getting the bill we have here passed.

Mr. HART. May I raise a point of clarification with the Senator from Vermont?

Mr. STAFFORD. Certainly.

Mr. HART. As you know, Colorado and several other Western States have serious problems with wastes at radium sites that have been abandoned by companies whose radium mining, milling, and processing activities produced the wastes. These sites are dangerous because they are not properly controlled or regulated and emit low-level radiation. We have found many radium waste sites scattered across Colorado—under restaurants, in empty lots where children play, near factories, and elsewhere. These sites need to be cleaned up to protect the health and safety of Colorado citizens. My question is this: Does the term "hazardous substance," as defined in **section 101(14)** of this bill, include the wastes at these radium sites?

Mr. STAFFORD. I will gladly assure the Senator from Colorado that if the radium waste sites do not otherwise come within section 170 of the Atomic Energy Act, and are not specified in the Uranium Mill Tailings Act, they will be eligible for funding and remedial action, subject to the other conditions of this bill.

Mr. HART. I appreciate the assurances of the Senator from Vermont. I applaud his efforts in getting this legislation enacted and feel confident that it will go a long way toward removing a serious health and safety problem that has plagued Colorado and other States in which the mining, milling, and processing of radium have occurred.

Mr. STAFFORD. Mr. President, unless the Senator from West Virginia has a point to make, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it so ordered.

Mr. HEINZ, Mr. President, I am pleased that the compromise measure worked out so diligently by my distinguished colleagues, Senators STAFFORD and RANDOLPH, and others includes the provisions of an amendment I had intended to offer on the floor providing a partial exemption for zinc products—specifically, exempting zinc metal and zinc oxide and instead, substituting zinc sulfate and zinc chloride **[Sec. 211]**.

This amendment insures that the ecomomic burden imposed on the zinc industry is reasonable, both from an environmental and economic standpoint, thereby avoiding further unwarranted economic damage to this ailing industry.

Because zinc metal is not inherently toxic, it makes more sense to assess fees on zinc sulfate and zinc chloride which are the building blocks of numerous other zinc compounds. These two compounds are listed as hazardous by EPA in connection with section 311 of the Clean Water Act and by DOT as part of its hazardous materials list. Also exempted is zinc oxide.

It is my hope that this minor adjustment in the fee structure will provide modest relief for the ailing domestic zinc industry. As an indication of the dire straits in which this industry finds itself, within the past year the closure of two zinc smelters—St. Joe's Monaca, Pa., plant in December 1979, and New Jersey Zinc's Palmerton, Pa., plant in August 1980—resulted in the loss of 43 percent of the Nation's zinc metal production capacity, over 2,000 jobs, and a worsening of the balance-of-payments situation.

As further evidence of the justification for this amendment, I ask unanimous consent to have printed in the RECORD the following materials prepared by St. Joe Minerals Corp.:

Exhibit 1—The Declining American Zinc Industry;
Exhibit 2—U.S. Zinc Metal Production Capacity;
Exhibit 3—Critique of "Fees on Zinc";
Exhibit 4—Description of Zinc Sulfate and Zinc Chloride; and
Exhibit 5—Impact of Exempting Zinc and Zinc Oxide.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

EXHIBIT 1—THE DECLINING AMERICAN ZINC INDUSTRY

Zinc is a vital material, as evidenced by the Government's current stockpile target of 1,425,000 tons. Its main uses are in galvanizing, to protect steel from corrosion, in die castings (where usage had been declining because of their decreased use in automobiles) and in brass. In tonnage terms zinc is the fourth most important metal, after steel, aluminum and copper. Below is a brief review of what has happened to the American zinc industry over the last decade:

1. Ten years ago, the United States produced over 1 million tons of zinc metal a year. It now produces just half that amount, about 500,000 tons a year.

2. Meanwhile, overseas zinc metal production has increased by 25 percent in the 1969–78 period, as new smelters, mainly in Europe and Japan, have been constructed.

3. A decade ago this country was dependent on foreign sources for 20–25 percent of its zinc metal; now, it is 50 percent import dependent.

4. Eleven U.S. zinc smelters have been closed since 1969. Only one, a small plant, has been replaced by a modern plant, also small; one was re-opened but at drastically reduced capacity. In 1969 this country had 14 zinc smelters; in August 1980 it had six.

5. In the last year alone, the closure of two zinc smelters (St. Joe's Monaca, Pa., plant in December 1979, and New Jersey Zinc's Palmerton, Pa., plant in August 1980) resulted in the loss of 43 percent of this country's zinc metal production capacity, about 2,200 jobs and a further drain on the nation's trade balance of, perhaps, $150–200 million a year. St. Joe recently announced a partial reopening of its Monaca smelter at about ¼ of rated capacity.

6. U.S. producers are currently quoting 39.5¢/lb. for zinc metal. In 1975—a recession year—prices were 39¢/lb.

7. Today's zinc metal price is only slightly more than in 1977 (35¢/lb.). In 1977, U.S. zinc producers collectively suffered a before-tax loss despite a 20 percent increase in consumption over 1975 levels.

EXHIBIT 2.—U.S. ZINC METAL PRODUCTION CAPACITY

[Short tons]

Zinc plant	Rated capacity (estimated)	1979 production (estimate)
Amax, Inc., East St. Louis, Ill	84,000	66,300
Asarco, Inc., Corpus Christi, Tex	108,000	59,200
Bunker Hill Co.,[1] Silver King, Idaho	104,000	81,403
National Zinc. Co., Bartlesville, Okla	56,000	56,000
New Jersey Zinc Co.,[2] Clarksville, Tenn	90,000	(?)
St. Joe Minerals Corp.,[3] Monaca, Pa. (closed December 1979)	222,000	185,000

EXHIBIT 2.—U.S. ZINC METAL PRODUCTION CAPACITY—Continued

[Short tons]

Zinc plant	Rated capacity (estimated)	1979 production (estimate)
New Jersey Zinc Co.,[2] Palmerton, Pa. (closed August 1980)	118,000	65,000
Total capacity	782,200	
Less capacity lost from St. Joe and New Jersey Zinc closures	340,000	
Capacity as of August 1980	442,000	

[1] Subsidiary of Gulf Resources & Chemical Corp.
[2] Subsidiary of Gulf & Western Industries, Inc.
[3] St. Joe recently announced a partial reopening at about ¼ of rated capacity.

Note.—In the last 9 months, closures have resulted in the loss of 43 percent of this country's zinc metal production capacity.

Source: Nonferrous Metal Data 1979, American Bureau of Metal Statistics.

EXHIBIT 3—CRITIQUE OF "FEES ON ZINC"

Attached is a detailed critique of an EPA document, "Fees on Zinc," which has been cited as justification for imposing Superfund fees on zinc.

The document represents a strained effort on EPA's part to trump up a case against zinc in the absence of any convincing data. One can only wonder if the "data" supporting the inclusion of other materials in Superfund is equally superficial.

First, the document incriminates zinc by listing a number of statutes and regulations in which zinc is listed as a hazardous substance. In truth, neither zinc metal nor zinc oxide appear on any such lists. Other zinc compounds do appear on these lists but not because of the presence of zinc in those compounds but rather because of the presence of other substances such as cyanide, arsenic and chromium.

Second, the document incriminates zinc by citing the damages it causes to aquatic life, animals and humans. In truth, some zinc compounds can be harmful to aquatic life, most often because of the presence of other materials in those compounds such as cyanide. Also, a number of zinc compounds are used as nutritive supplements of many animals and plants to prevent zinc deficiencies and to promote growth.

Concerning human health, EPA has not set any human health-related drinking water standards for zinc because the presence of massive quantities of zinc in drinking water is usually self-limiting, causing bad odor and taste, and the effects of drinking such water are transient and leave no permanent damage.

Further, incriminating zinc in connection with the El Paso smelter is intentionally misleading. It has never been suggested that zinc emissions from that smelter have caused any adverse human health effects and the effects which were noted have been subsequently discredited by reputable scientists. In addition, the smelting of zinc has not been shown to cause the release of hazardous quantities of other pollutants.

Third, the document incriminates zinc by citing dozens of instances where zinc has been detected in the environment. In truth, the studies from which this data were compiled provide no basis for incriminating zinc. Instead, the studies merely show that chemists have the capability to detect zinc. None of the studies show that zinc has been detected in levels sufficient to cause any damage to human health, the environment or the ground water.

Fact: First, only ten compounds—not twenty-four—are so designated. Second, neither zinc metal nor zinc oxide is designated hazardous under this act. Third, the zinc compounds designated hazardous are so designated because of the presence of materials, such as cyanide and arsenic, which can be combustible, corrosive and highly toxic in and of themselves.

TYPES OF DAMAGES

Natural resource damages from zinc and many zinc compounds

Statement 1: Acutely toxic to aquatic life and to livestock, bio accumulates.

Fact: Zinc may pose a potential problem for aquatic life, but it is doubtful whether it bio accumulates. Concerning livestock and plants, it is noteworthy that some zinc compounds have a very beneficial effect. For example, zinc carbonate and zinc oxide is used as a nutritive supplement for many animals, zinc sulfate is used to

overcome zinc deficiencies in some plants and zinc bacitracin is used as a growth factor in swine and poultry nutrition.

Statement 2: Can render drinking water unusable due to extremely bad taste and odor.

Fact: EPA has not set any primary (health-related) standards for zinc under the Safe Drinking Water Act. EPA has set secondary standards to prevent adverse sensory (taste, smell) effects. It is true that large concentrations of zinc, many times in excess of EPA's drinking water standard, cause drinking water to have a bad odor and taste and it is unlikely that anyone would drink such water. However, even if someone did, the effects are transient and relatively minor, leaving no permanent damage.

Human health effects

Statement 1: Prolonged exposure of high concentrations can result in acute effects (nausea, loss of appetite, stiffness and irritability).

Fact: Again, such high concentrations, many times in excess of EPA's drinking water standard, would make it very unlikely that anyone would drink such water because of its odor or taste. Even if they did drink it, the effects mentioned are transient and leave no permanent damage.

Statement 2: Smelting zinc ore releases lead, arsenic, zinc, cadmium, which cause lead poisoning (effects of which include early death, especially in fetuses and young children, retardation, blindness, epilepsy, coma, abortions, premature birth and congenital abnormalities); cadmium induced kidney damage; and lung cancer from arsenic.

Fact: This is a very misleading and unfair statement for three reasons:

First, the effects attributed to lead emissions from zinc ore smelting only occur with the intake of massive quantities of lead. There is no scientific data that zinc smelting creates lead emissions sufficient to cause such effects.

Second, emissions of zinc during the smelting process have never been found to cause any adverse effects. Indeed, scientific studies indicate that concurrent intake of zinc with cadmium and lead tends to protect against lead and cadmium poisoning.

Third, the effects attributed to arsenic and cadmium released during zinc smelting only occur with a very large intake of these materials. Again there is no data even suggesting that arsenic and cadmium released during zinc smelting produce such effects.

Prevalence of zinc and zinc compounds released to the environment

It is impossible to respond to each of these statements as they reflect the combined findings from nine documents (one of which is unpublished, EPA internal documents and two others which are not available).

A review of the other six studies indicates that zinc has been unjustly incriminated, and that there is no valid basis for treating zinc as a hazardous substance under S. 1480. Below are comments on the nine documents:

1. Prevalence of Subsurface Migration of Hazardous Chemical Substances at Selected Industrial Waste Land Disposal Sites.

Source: EPA, Oct. 1977, SW 634—NTIS.

There is absolutely no justification for including zinc in S. 1480 to be found in this document. This study examined 122 sites in 15 states and conducted an in-depth examination of ground water at 50 disposal sites in 11 states, and its findings are based on the flawed assumption that "ground water was considered contaminated with hazardous substances if one or more of the following constitutents was detected: (1) heavy metals other than iron and manganese . . ." (p. V).

Zinc was detected at 11 sites at levels below EPA's drinking water standards. Zinc was also detected at 2 sites at levels in excess of EPA's drinking water standard for the following reasons:

"Zinc concentration in the samples reflected the contact of the water [ground water] with zinc-coated casings [monitoring well casings] (p. 60).

"Zinc was detected in high concentrations . . . but was probably derived from galvanized [zinc coated] materials in the screen or casing [of the monitoring well]. *The background well did not show contamination"* (emphasis added) (p. 66).

2. Assessment of Groundwater Contamination at Michigan—Part I.

Source: Michigan Department of Natural Resources, December, 1979.

There is no data in this study to support inclusion of zinc under S. 1480. This study inventoried all sites in Michigan where ground water contamination is known or suspected.

Zinc was detected at only two sites, and there is no information on the concentrations of zinc found in the ground water. Further, it is noted that the source of "contamination" at one of the sites has been eliminated (apparently closed) (p. 73).

3. Resource Losses from Surface Water, Groundwater, and Atmospheric Contamination: A Catalog, prepared by the Congressional Research Service in March 1980 for the Committee on Environment and Public Works, U.S. Senate.

This document does not support zinc's inclusion in S. 1480. At sites where zinc was detected there is no information on levels of concentration, and many other truly hazardous heavy metals and pollutants were detected at those same sites. For example, at one site where zinc was detected, the ground water was also found to contain carcinogens, such as vinyl chloride and benzene, and a host of other chemicals (p. 112). Zinc can hardly be singled out for blame in this case or the others cited in the study.

One other incident mentioned in "Fees on Zinc" concerning a smelter in El Paso is discussed on p. 239 of the above study. First, the incident concerns lead smelting—not zinc smelting. Second, none of the effects referred to are related to emissions of zinc from that smelter. Third, a panel of the Society of Occupational Safety and Health (SOSH) chaired by Dr. Waren Muir of the Council on Environmental Quality stated regarding the El Paso incident and the studies:

"The opinion of the committee was that no firm conclusion could be drawn from the studies as to whether or not there are subclinical effects of lead on children in EL Paso and that *the reports and data made available have not clearly demonstrated any psychologic or neurologic effects in the children under study.*" (emphasis added)

Source: Muir, W. R.: Abstract of a Review of Three Studies on the Effects of Lead Smelter Emissions in El Paso, Texas, in Air Quality Criteria for Lead, U.S. Environmental Protection Agency, Washington, 1977, pp E-1 to E-4.

Clearly, zinc was not a problem in the El Paso incident, and the above study casts serious doubts on whether any adverse effects are associated with the El Paso smelter.

4. Congressman Eckhardt study "Waste Disposal Site Survey."

Source: Oversight and Investigations Subcommittee of House Interstate and Foreign Commerce Committee October, 1979. 96-IFC 33.

There is support for inclusion of zinc contained in this document. This study reports findings of a survey of 53 chemical companies. Cong. Eckhardt's subcommittee submitted a questionnaire to those companies asking that they identify whether certain components are present at their disposal sites.

One line on the lengthy questionnaire asks the companies to indicate the presence of "zinc, cadmium, copper, chromium (trivalent)" (p. XXXIX). The questionnaire does not allow the respondent to identify the presence of only one of the four and is therefore, extremely misleading. Indeed, it is entirely possible that none of the companies found zinc in their disposal sites.

Lastly, the subcommittee goes to great lengths to emphasize the limitations of the study (pp. XLIV-XLV) saying:

"It is further emphasized—and should be clearly understood by the reader—that *these are waste disposal sites, not necessarily hazardous waste disposal sites.* Not all reported waste would necessarily produce a hazardous site. Moreover, *neither the exact quantity of any particular chemical component in the waste disposed nor the condition* of the site itself is known. Thus, these sites do not necessarily pose threats to public health or the environment." (emphasis added)

5. CRS document—6 case studies of Compensation for Toxic Substances Pollution.

Source: CRS 9613, June, 1980.

There is only one mention of zinc in this entire document and that is in connection with the El Paso incident discussed above in item 3. Again, there is no indication that zinc caused any adverse effects at the El Paso smelter.

6. Criteria document for Zinc Ambient Water Quality Criteria.

Source: EPA's Office of Water Planning and Standards. PB 296-807.

This document concerns the effect of zinc on aquatic organisms—not humans. It is generally acknowleged that the presence of zinc at certain levels may pose a potential problem for aquatic organisms.

The document concluded that there is no human health risk posed by zinc and, therefore, made no recommendation to establish a primary (health related) drinking water standard. In addition, the document recommends no change in the secondary (esthetic) drinking water standard.

7. Damages and Threats Caused by Hazardous Materials Sites.

Source: EPA, January, 1980, EPA 4309-80004.

This document is being "updated" by EPA and is not available to the public at this time.

8. Recent report by Fish and Wildlife Service on the Hudson, Potomac and Nanticoke (Md.) Rivers, June or July, 1980.

This report cannot be located, and the FWS is not even aware of its existence.

9. Unpublished field reports by EPA's Hazardous Waste Task Force.

Reportedly, these reports may be used for enforcement purposes and they are not available for public review.

EXHIBIT 4.—ZINC SULFATE

Major uses

Hardener in viscose rayon spinning baths.
Flotation reagent.
Preparation of zinc chemicals.
Electroplating.
Fungicide.
Trace element used to overcome zinc deficiencies in humans, animals and plants.
Pigment used in paints, floor coverings and coated fabrics.

Properties

Water soluble.
Some forms also soluble in methyl or ethyl alcohol or glycerol.

Building block for

Zinc bromide which is used in pharmaceuticals, photography, rayon manufacture and radiation viewing shields.

Zinc carbonate which is used as an animal food supplement, in rubber products, pharmaceuticals, ceramics, cosmetics and as fireproofing.

Zinc cyanide which is used in pharmaceuticals, insecticides and in electroplating.

Zinc ferrocyanide which is used in pharmaceuticals.

Zinc iodide which is used in pharmaceuticals.

Zinc laurate which is slightly flammable and used in paints, varnishes and as a softener and activator in rubber compounds.

Zinc palmitate which is used in lacquers, paint pigments, rubber compounds and as a plastics lubricant.

Zinc peroxide which is used in pharmaceuticals and cosmetics.

Zinc phosphate which is used in dental cements and as a steel and aluminum coating.

Zinc stearate which is used in cosmetics, greases, pharmaceuticals and lacquers.

Zinc sulfide which is used as paint and linoleum pigments, in rubber, plastics, X-rays, TV screens, luminous watch faces and fungicides.

Zinc dimethyldithiocarbamate which is used as an agricultural fungicide.

ZINC CHLORIDE

Major uses

Trace mineral added to animal feeds.
Dietary supplement.
Deodorant.
Galvanizing iron.
Electroplating.
Dental comments.
Pharmaceuticals.
Wood preservative.
Disinfectant.

Properties

Soluble in water, alcohol, glycerol and ether.
Inhalation of very high concentrations can have adverse pulmonary effects.

Building block for

Zinc ammonium chloride which is used in welding, dry batteries, galvanizing and as a soldering flux.

Zinc ethyl which is flammable and used as a catalyst and in aircraft and missile fuel.

EXHIBIT 5.—STATISTICS

	1979 (short tons)	Value at $10/ton (per year)
Zinc metal:		
U.S. production	579,000	
Imports	581,000	
Total	1,160,000	$11,600,000
Zinc sulfate:		
U.S. production	52,000	
Imports	3,100	
Total	55,100	550,000
Zinc chloride:		
U.S. production	29,000	
Imports	650	
Total	29,650	296,500
Zinc oxide:		
U.S. production	190,000	
Imports	30,000	
Total	220,000	2,200,000

NET REVENUE LOSS

Provision	Net loss (gain) (per year)
Exempt zinc metal	$11,600,000
Substitute zinc sulfate and zinc chloride	(846,500)
Exempt zinc oxide	2,200,000
Total	13,000,000

● Mr. DANFORTH. Mr. President, the disposal of hazardous waste is one of the most urgent problems confronting Federal and State government. It is an issue of great importance to the State of Missouri, where more than 100 abandoned sites have been discovered.

Hazardous waste disposal is a subject which has become heavily loaded with emotionalism. It is a subject which pubic officials often discuss in inflammatory terms. But by creating headlines for themselves, they also succeed in creating anxiety among the people. No one likes the idea of living near a waste disposal site. In many States where illicit dumping has occurred, citizens live in fear that their community will be the next Love Canal or Valley of the Drums. And the possibility of such a development justifiably frightens them.

Clearly, we have no time to lose. Hazardous wastes are produced daily; we cannot put them on hold while we dally through deliberations. There is only one way to restore public confidence on this issue: We must get on with the work of cleaning up what has already been dumped, and establishing safe dumping sites for future waste. The creation of a superfund is central to this process. Although there are many differences among Members of the Senate, I believe the clear consensus is that we must clean up abandoned hazardous dump sites as soon as possible. I strongly support and

urge passage of the compromise superfund bill; it is the all-important first step in addressing this problem.●

● Mr. HUDDLESTON. Mr. President, I would like to commend the members of the Senate Environment and Public Works Committee and the Senate Finance Committee as well as all other interested parties including the distinguished leaders of both the majority and the minority for their outstanding efforts in reaching a compromise in the form of the amendment we have before us on the so-called superfund legislation. No one will argue that such a compromise was necessary in order to enact such urgently needed legislation addressing the hazardous waste problem during this session of Congress. We, in the Congress, simply cannot wait any longer to give the Environmental Protection Agency the tools it needs to finance the cleanup of abandoned, leaking hazardous waste sites and spills of toxic substances into water, on land or into the air. This compromise will grant the agency such authority.

Much has been written during the recent months, indeed the past 3 years, about the need to put the Nation's house in order with respect to the great environmental dangers connected with abuses of the environment by improper dealing with hazardous wastes. Hazardous wastes, if not properly disposed, are capable of causing death, cancer, miscarriages and birth defects. The Environmental Protection Agency has pointed out that there are several thousand potentially dangerous dumpsites around the country.

In my home State of Kentucky the need for superfund is abundantly clear. In 1977 the Louisville Municipal sewer system was contaminated by chlorinated organic chemicals dumped by a waste hauler. The waste water treatment plant was temporarily evacuated by workers because of the toxic fumes produced by the illegally dumped waste. The "Valley of the Drums" near West Point, Ky., is an abandoned disposal site containing approximately 17,000 drums of industrial waste. Chemicals migrating from the site have been detected in streams draining into the Ohio River.

In addition, an EPA enforcement task force has reported that there are some 128 potential hazardous waste sites identified to date in Kentucky, three of which are identified as having medium or high rates of seriousness. Yet another assessment by EPA has identified in Kentucky 174 industrial facilities with approximately 295 impoundments, 40 percent of which contain potentially hazardous waste. Two-thirds of these potentially hazardous waste impoundments are not lined and almost 75 percent of them have no ground water monitoring systems. These kinds of situations cannot be allowed to continue.

In short, Mr. President, we must move forward with this compromise which I believe contains the minimum coverage and financing necessary to launch a meaningful first step to address the severe threats posed by abandoned dumpsites, hazardous substance spills, leaks and releases. As a cosponsor of the compromise amendment, I urge my colleagues to join with me in support of this legislation in order that we can avoid any further delays in implementing effective action. I would like to point out as a matter of information that last week the HUD Independent Agencies Appropriations conference committee approved a $14 million increase in EPA's already inplace emergency uncontrolled hazardous waste program.

This appropriation, which is a result of my amendment to the HUD Independent Agencies bill on the Senate floor, should enable EPA to properly prepare for the transition to the operation of the legislation we are acting upon today.●

Mr. HUMPHREY. Mr. President, the Stafford-Randolph substitute to S. 1480, the Environmental Emergency Response Act, would allow an aggressive Federal response to certain hazardous waste sites identified as national priorities. While I am concerned over some of the provisions of the substitute and especially troubled over the manner in which this body is forced to consider the critical issue of hazardous waste in the closing moments of an annual lameduck session, I nevertheless am pleased that the managers have agreed to accept, as part of the substitute, an amendment I had submitted to the committee for its consideration.

My provision [Sec. 105(8)(B)] deals with the setting of national priorities for Federal response. The language would require that the top 100 of these national priorities shall include, to the extent practicable, at least one site from each State, that site designated by the State as the one posing the greatest danger to its own residents.

By "to the extent practicable," it is not meant that the executive branch is to have free rein in the selection of priority hazardous waste sites. The language simply obligates the executive branch of the Federal Government to use commonsense. While most States including my own State of New Hampshire, possess at least one hazardous waste site serious enough to warrant aggressive Federal involvement, it may be that one or more States would not have such a site or might not desire a Federal presence.

The approach specified by this provision has already been incorporated in the House-passed Hazardous Waste Containment Act, H.R. 7020. The point is that the legislation before us sets up an elaborate mechanism requesting the States to inventory their hazardous waste sites and to submit this information to the Federal Government. This interest in receiving the inventories should imply that the information will be used and that the worst hazardous waste site in each State will be taken care of.

It seems very important to me that we rely upon the individual State governments, historically much closer to the people than Federal bureaucrats sitting in Washington, to designate the worst hazardous waste site within their borders needing aggressive Federal cleanup action. Nothing in the provision would prevent the executive branch from designating more than one hazardous waste site in a given State as a national priority. It will simply require that the list of national priorities shall, to the extent practicable, include at least one site from each State among the top 100 sites identified as priority targets.

In this fashion, the benefits of this legislation will be available to the residents of every State. After all, it is the residents of every State who will pay to implement this bill, either through direct tax money or through the payment of higher prices for certain household products and other necessary items.

Mr. President, the people in each of our States are very much aware of the hazardous waste problem. In many cases, ground and surface water supplies have been contaminated. In other cases, haz-

ardous wastes have affected the quality of life of whole neighborhoods and have led to substantial declines in nearby property values. It therefore seems essential that any congressional response to this serious problem benefit the people in all 50 States. Thus, I am pleased that the managers of the substitute, the distinguished Senator from Vermont and the distinguished chairman, the Senator from West Virginia, have agreed to incorporate my provision into their substitute. I thank them for their cooperation.

UP AMENDMENT NO. 1793

Mr. HUMPHREY. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration [Sec. 303].

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. HUMPHREY) proposes an unprinted amendment numbered 1793:

On page 113, line 11, strike "1985" and insert in lieu thereof "1983".

Mr. HUMPHREY. Mr. President, the amendment I offer will simply sunset the authority to collect the taxes mandated by this legislation 2 years earlier than under the provisions of the Stafford-Randolph substitute. I do this because I believe that the substitute has been overly generous in mandating sunset only at the end of September 1985. In view of the fact that we are being asked to consider legislation dealing with as critical an issue as hazardous wastes during the final moments of an unusual lame duck session of the Congress, and that there have been many thoughtful calls that we consider this matter only in the 97th Congress, I believe that the least this body can do is to mandate sunset in 1983 unless the authority is renewed by subsequent act of Congress.

As an example of the type of thoughtful calls to delay consideration of superfund, I should like to share with my colleagues recent editorials which appeared in the Washington Star and the Wall Street Journal, and I ask unanimous consent to have the editorials printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

TRYING TO SALVAGE "SUPERFUND"

In an effort to salvage a "superfund" toxic-wastes bill before the lameduck Congress becomes a dead duck, supporters are trying desperately to generate Senate action on a substitute proposal—one that attempts to bridge the chasm between a House-passed bill and a broader Senate version considered too controversial for passage in the waning 96th Congress.

The substitute bill offered by Sens. Jennings Randolph, chairman of the Environment Committee, Robert T. Stafford, R-Vt., the committee's ranking minority member and a prime supporter of toxic-wastes legislation, has the elasticity expected of last-minute compromises. The more ardent superfund advocates argue that it gives away too much of the original Senate bill's coverage in an effort to placate the House—which, not surprisingly prefers its own legislative package to control chemical contamination.

It would be preferable, it seems to us, to let legislation as sensitive as toxic wastes wait until the new Congress convenes in January. The distance between the original Senate bill and the House version is so great that even a concerned attempt to compromise, with several items from Column A and a few from Column B, may cause more problems of administration and equity that it resolves.

Senator Stafford, who is expected to be the new Environment Committee chairman and a sponsor of the original Senate bill, believes the public-health threats

from chemical wastes are so urgent it is vital to address the problems without further delay. There is also apprehension among superfund supporters that a new Congress—and a Republican administration—might be more sympathetic to industry positions on toxic wastes, diminishing chances for what they consider an effective law. There is more demonology in that perspective than we care to accept. If industry has not eagerly embraced the pending legislation, neither has it been callous to the danger of toxic wastes.

Toxic wastes are a problem, possibly a severe one. A central element in fashioning legislation, however, has been to determine the dimensions of the problem. Estimates vary astoundingly. An episode like New York's Love Canal was an especially alarming instance of contamination; it constituted for many Americans, in part because of intensive and occasionally shrill news coverage and some careless pronouncements by government environmentalists, a definition of the problem—a questionable definition.

It does not argue complacency or indifference to suggest that there is room for more careful study and thought before Congress produces a toxic-waste bill. A concensus has developed that cleanup and control of chemical wastes is crucial, and that industry must share responsibility for accomplishing these goals. But the current proposals have a punitive quality that implies an intent as much to punish as to remedy.

We agree there is urgency in the toxic wastes issue. But the frenzied atmosphere of a lameduck session is not the climate in which to translate urgency into law.

Superfund Superrush

No one paid much attention back in September when Congressman Dave Stockman brought up some trenchant criticisms of a $1.2 billion superfund bill for cleaning up abandoned chemical waste dumps. The bill passed the House by a whopping 351 to 23, many of the Congressmen no doubt taking comfort from the widespread assumption that no bill would ultimately pass because the Senate was considering a far more sweeping and expensive bill and no agreement was likely.

In the wake of a resounding national mandate against intrusive government, though, the outgoing Congress has decided to have a few for the road. After patching up similar differences to gulp down an Alaska lands bill, it is getting ready to swill the superfund. On Monday Senators Randolph and Stafford, respectively the outgoing Democratic and incoming Republican chairmen of the Environment and Public Works Committee, introduced a scaled-down Senate bill closer to the House version. On Tuesday, after only two hours of a scheduled three-day markup session, the Finance Committee voted unanimously to report the original Senate bill to the floor, indicating an urgency to pass something.

So it's worth taking a look or two at the merits of the bill, and in particular Congressman Stockman's pertinent criticisms of the House version. To start with, dumps do not migrate. Both the public health hazards associated with chemical wastes and the environmental tradeoffs are mostly local. State and municipal governments are in the best position to determine, say, whether it's worth sprucing up an eyesore even if that means raising production costs for local industries. There's no compelling reason for a strong federal role here.

Mr. Stockman also called attention to the dangerously open-ended language in the House superfund bill. It would give the Environmental Protection Agency plenary authority to clean up any waste site in the country any time a release of hazardous waste presents even a hypothetical threat of "substantial endangerment" to the environment—all without any criteria for cost limitation.

Someday about a year from now, Mr. Stockman suggested to his House colleagues, Congressmen "are going to receive a letter from a company in their district that has just received a $5 million or $10 million liability suit that was triggered by nothing more than a decision of a GS-14 that some landfill, some disposal site, somewhere, needed to be cleaned up and, as a result of an investigation that his office did, he found out that that company contributed a few hundred pounds of waste to that site 3 years ago."

The whole rush for the superfund, of course, was triggered by the controversy at Love Canal, which itself has turned out to be far more ambiguous than first reports suggested. Even state-sponsored experts have concluded that so far there is no hard scientific evidence of health damage from the wastes.

That is of course not to say that chemical wastes are no danger; Congressman Stockman supported the need for quick clean-up in the cases where health threats seem imminent. The superfund bill may even be, as its proponents have it, the most

important environmental legislation of the Eighties. But if so, it's worth spending the time to get it right. We certainly do not need one last gasp of the open-ended, no costs-barred approach the electorate rejected in turning out this Congress and voting in a quite different one.

Mr. HUMPHREY. Mr. President, the concern I have over the sunset issue was earlier addressed by my distinguished colleague, the Senator from North Carolina, when he added language to section 303 that would sunset the tax collecting authority once a certain amount of funds have been collected by the taxes. This amendment has already been agreed to I understand, but I would prefer the additional safeguard of an earlier sunset time be also included. Thus, I urge my colleagues to give this amendment careful consideration and I urge its adoption.

Mr. President, in addition to the editorials I have had printed in the RECORD, I shall ask unanimous consent to have printed in the RECORD a letter that is urging caution and delay in quickly adopting any superfund legislation during the lameduck session. This one is a letter I received from the National Association of Manufacturers and it will be of interest, I believe, to my colleagues.

I ask unanimous consent to have printed in the RECORD that letter to which I have made reference.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF MANUFACTURERS,
November 20, 1980.

Hon. GORDON HUMPHREY,
U.S. Senate, Washington, D.C.

DEAR SENATOR HUMPHREY: On Tuesday, November 18, the Senate Committee on Finance reported without change or recommendation S. 1480, the "Environment Emergency Response Act," otherwise known as "superfund." The ostensible reason for the Finance Committee's refusal to act is the stated intention of members of the Environment and Public Works Committee to offer a substitute to S. 1480 on the floor of the Senate.

The substitute is expected to reduce the size of the fund to $2.7 billion, 88 percent of which will be raised by industry-paid fees on barrels of crude oil and pounds of petrochemical feedstocks and inorganic compounds. Its sponsors claim that the substitute reduces the liability of those causing or contributing to the release of a hazardous substance, which, in fact, it would. However, the substitute retains a provision for attaching strict liability for such releases, which means that a showing of negligence or fault is not required.

The National Association of Manufacturers (NAM), which represents 12,000 manufacturing enterprises in the United States, strongly believes that hurried action on legislation of great magnitude, such as superfund, is grossly inappropriate in lame duck session, especially on a substitute bill that has been the subject of hearings or undergone the scrutiny of committees other than Environment and Public Works, such as the Committee on Commerce, Science, and Transportation. Lame duck action is even less desirable in light of the dramatic shift in the makeup of the Congress and the Executive Branch. The new administration and Congress should be allowed to formulate and debate their own proposals.

NAM has long supported legislation addressing the single major problem of cleaning up abandoned hazardous waste disposal sites, and will work diligently toward that end in the 97th Congress. S. 1480 and its substitute overreach this problem, however, and we cannot support them. We urge you, therefore, to vote against these bills in the waning hours of this Congress.

Thank you for your consideration of our views.

Sincerely,

DANIEL W. CANNON,
Director, Environmental Affairs.

Mr. HUMPHREY. Mr. President, I call particular attention to the fact that the National Association of Manufacturers is firmly

stating that it is not opposed to legitimate legislative proposals which would address the problem of abandoned hazardous waste disposal sites. The association simply feels that a lameduck session of Congress is far from the ideal circumstance in which to consider the matter.

I know that many of my colleagues will probably vote in favor of the Stafford-Randolph substitute though they would much prefer to delay until the convening of the 97th Congress. This is not to say that the tremendous efforts of our distinguished colleague, the Senator from New Hampshire's sister State of Vermont, and the distinguished chairman from West Virginia, are not appreciated. However, I am certain that my distinguished colleagues share my belief that this is not the ideal time nor the ideal manner in which to consider such legislative proposals.

While numerous amendments to the Stafford-Randolph substitute might be desired by many, I fear that such amendments, considered in the rush of the closing moments of this Congress, would be open to the same charge of inadequate consideration. After very careful consideration, and mindful of the great efforts of those who crafted the compromise before us, I decided to offer a very simple amendment rather than any amendments which would affect the substance of the legislation. In view of its simplicity, I believe that my colleagues should easily be able to see the merits of the amendment. While I am well aware of the fact that the distinguished majority leader and the distinguished minority leader have announced their intent to oppose any amendments to the substitute other than the previously adopted Helms amendment, I firmly believe that the amendment I have offered should be exempted from this opposition and I once again urge its adoption.

Mr. RANDOLPH. Mr. President, it is my understanding the Senator is withdrawing the amendment he had sought to have considered. Is that correct?

Mr. HUMPHREY. I intend to do that.

Mr. RANDOLPH. I do say that I think that the comment the Senator is making helps complete this record, at any time, whether it is now or later, and it is in that spirit that there was an agreement that this legislation might come to a vote, that as to amendments to be offered—not that they could not be offered—the leadership, including many, many Senators would necessarily vote against them. There would be a reason why some would not vote for them. But that is the understanding that we have had on both sides of the aisle.

So I know the Senator will do what he thinks best, but it is my hope that it might be withdrawn since he has spoken to the point of the amendment.

Mr. HUMPHREY. Mr. President, I am aware, of course, of the agreement reached by the leadership. They do not wish to impede the progress of this legislation or inconvenience my colleagues.

I did want to make the point, however, that I, as the case with so many, would have some very grave concerns about the wisdom of proceeding with so important and sensitive a matter under the present circumstances, namely, the lameduck nature of this session.

I think, however, that there has been enough discourse directed at this particular issue of sunsetting during the discussion of the Helms amendment, my own remarks, and those of Senator RANDOLPH that it has to be clear to anyone reading the RECORD in the future that we do not mean for this to be an ongoing proposal many years in the existence, that if it should be necessary for there to be that kind of program, then it is hoped fervently by most of us, I believe, that a new Congress will take an in-depth look at this program with a view toward substantially changing it.

If the distinguished floor managers of this legislation are essentially in agreement with my sentiments on that point, I am willing to withdraw the amendment at this point.

Mr. RANDOLPH. Mr. President, will my colleague yield?

Mr. HUMPHREY. I yield.

Mr. RANDOLPH. This is not said in pleasantry, but Senator HUMPHREY from New Hampshire is a pilot in his own right. He knows what it is to be up front at those controls on jets flying sometimes 30,000 feet above the Earth, and he also knows that even though the weather is smooth above clouds often he has to come down under the cloud cover and touch down at an airport where the visibility is not too good and where the ceiling may be 100 or 150 feet.

I am only saying in this matter we are in some troubled water if we consider it. I am not attempting to delineate all the matters that we have had under consideration, but I assure my colleagues that this is a continuing matter of study in the Committee on Environmental and Public Works, although that would perhaps better be said by Mr. STAFFORD and our colleague who will become the chairman in the 97th Congress.

But I feel Senator STAFFORD is sensitive to matters of concern on legislation of this type highlighted by the Senator from New Hampshire and three or four others who have spoken today, including the Senator from Maine (Mr. MITCHELL) who is a member of our committee, taking another viewpoint than that expressed by the Senator from New Hampshire.

I say to Senator STAFFORD that, as to matters that are considered here today in the form of an amendment which is withdrawn, these would be before our committee as we go into the 97th Congress.

Mr. STAFFORD. Mr. President, if the distinguished Senator will yield, I certainly agree with that.

While I have the floor for a second, if the Senator will yield further, I ask unanimous consent that Senators LEVIN and RIEGLE be added as cosponsors of the pending legislation, amendment 2631.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I thank the Senator for yielding.

Mr. HUMPHREY. Mr. President, I wish to clarify further, if possible, the sentiment which exists in regard to the sunset provision of this legislation, both that adopted on my own and my own amendment which I have withdrawn.

The point I am trying to make is that, if it is found necessary to have a major ongoing program in the future years, it is the hope of this body that the matter will be taken up anew and structured again from the beginning, that this particular program as it is now

set up will not be continued on and on and on into the future. I think that is visible given the situation.

Mr. RANDOLPH. Mr. President, as the Senator knows, and I do not wish to interrupt, the legislation if it does become law will be for a 5-year period.

Mr. HUMPHREY. Yes.

Mr. RANDOLPH. That does not mean that any law could not be amended, of course, if the new Congress when it moves in, of course, decides to make that change. But that is the limitation in the pending measure.

Mr. HUMPHREY. Yes. I am trying to bring out the apparent concern and underline the apparent concern for the record in future times so people will understand what we had in the way of intent when this legislation was passed.

Senator HELMS has suggested amending the legislation with respect to a dollar figure. One might say he sunsetted the legislation with respect to a cap on the maximum tax that can be collected.

I offered an amendment that would sunset the bill 2 years earlier than the date which Senator RANDOLPH has just alluded to.

I am perfectly willing to have withdrawn that amendment, but I just want to make it clear that if this program is to continue on and on into the future it is our hope that a new Congress will take the matter up fresh and take a perhaps more relaxed and time-consuming approach to it.

After all, it has been put together in a time with perhaps a little more haste than many of us would wish to see. That is the purpose of my amendment and the reason I have withdrawn it is to make it clear we hope that if it is necessary to extend this legislation in any way that it will be done in perhaps a more orderly fashion and given even greater care in the future.

I yield the floor.

The PRESIDING OFFICER. For the edification of the Chair, does the Senator from New Hampshire withdraw his amendment?

Mr. HUMPHREY. Yes; I withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

Mr. COHEN. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the Stafford-Randolph substitute to S. 1480, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COHEN. Last week, long-awaited regulations to monitor transportation and disposal of hazardous wastes were finally enacted. Under the Resource Conservation and Recovery Act signed by President Ford in 1976, all generators of hazardous waste—including manufacturers and users of dangerous chemicals—as well as transporters of the substances, must keep accurate records of this material from point of origin to final disposal in acceptable sites and be accountable to EPA for all aspects of handling toxic substances.

Despite these far-reaching regulations, we know that we are only scratching the surface. Of the more than 30,000 sites in the United States that are used for treatment, disposal or storage of hazardous substances, EPA estimates that 2,000 may pose significant risks to

human health and the environment and that 7,000 may require some sort of remedy. For years, despite the advances in technological progress, we have watched hazardous and poisonous chemicals disposed of in the most primitive manner—burial or dumping.

The problems this archaic disposal method have caused are staggering. A recent report issued by the Library of Congress at the request of the Environmental Pollution Subcommittee indicates that no region of the country is free of at least one single serious incident of long-term economic damage attributable to airborne toxics. The report indicates that this country faces serious problems with its water quality, its wildlife and farmland and other natural resources.

The Library of Congress study cites disturbing instances of resource damage in my own State of Maine, where residents of Gray recently discovered that their water supply had been poisoned by the burial of waste oil substances. Also, the report cites damage to clam flats on the Maine coast caused by mining residues, and damage to salmon eggs in one Maine lake caused by DDT residues.

Other reports uncovered equally disturbing problems in other parts of Maine and the remainder of New England as well. As many as 50 landfill sites in Maine that could cause a significant hazard to public health are found in a report compiled by the Environmental Protection Agency. An additional 100 municipal landfill sites were listed as containing toxic materials. EPA officials state that the potential threat from buried toxic chemicals is one of the top environmental issues confronting New England, which is cited as having the greatest potential for public health danger.

While much of the data about the scope of the problems are still being uncovered, we know two things: The problem of toxic wastes poisoning our environment is a growing one, and it will take generations for our resources to recover.

Clearly the time has come for the Congress to develop a mechanism to handle this problem. The bill which is before us today represents a clear compromise between the Senate bill, of which I am a cosponsor, and the two House bills.

The Stafford-Randolph bill makes a number of concessions to the House position: It eliminates the Federal cause of action, joint and several liability provisions, special medical causation provisions, and reduces the size of the fund considerably. It brings the bill closer to the original bill which received, at least in part, approval from industry.

Mr. President, I do not believe this bill is perfect. It is, however, a reasonable compromise at this late date and I urge my colleagues to support it.

Mr. RANDOLPH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MITCHELL). Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I ask unanimous consent that Senator TSONGAS of Massachusetts and Senator DANFORTH of Missouri may be added as cosponsors of the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, the State of New Jersey has been and remains a strong proponent of the superfund legislation pending in the House and the Senate [Sec. 114]. We have been grappling with the serious environment and health problems stemming from discharges and illegal and improper disposal of hazardous wastes and oil for several years. In 1977, the New Jersey Legislature enacted a comprehensive statute covering discharges of oil and chemicals into surface and ground waters and onto land. The statute was amended in 1980 to expand coverage to include abandoned hazardous waste disposal sites and certain other "ancient" source discharges. The major source of revenues for the New Jersey Spill Compensation Fund is a tax applied to transfers of petroleum and a tax on nonpetroleum hazardous substances.

New Jersey and several of the other States with successful State spill funds (including Michigan, Florida, California, Maryland, and New York) have on repeated occasions expressed grave concerns that the preemption language contained in this bill may work to slow down governmental response to spills of oils and hazardous wastes by creating questions as to the availability of State and or Federal funds to provide operating, up front dollars to finance emergency cleanup and containment actions. I understand the concern debated over the years in conjunction with superfund that industry not be forced to suffer a double tax for the same functions carried out by different levels of government. I also understand that it is not the intent of the sponsors of this bill to make prompt, effective and thorough response to such releases more cumbersome.

Mr. President, in order to clarify the remaining questions concerning allowable State activity under this bill's preemption language, I wonder if the Senator from West Virginia would consent to respond to a few questions on this issue?

Am I correct in understanding that it is the purpose of this legislation to prohibit States from requiring any person to contribute to a fund for the purpose of reimbursing claims already provided for in this legislation?

Mr. RANDOLPH. Yes, that is the clear intent. The purpose is to prohibit States from creating duplicate funds to pay damage compensable under this bill.

Mr. BRADLEY. However, there is no such preemption of a State's ability to collect such taxes or fees for other costs associated with releases that are not compensable damages as defined in this legislation.

Mr. RANDOLPH. The Senator is correct.

Mr. BRADLEY. There is nothing in the language or intent of this bill which would prohibit a State from responding to a release either under agreement with the Secretary, at the direction of the Federal on-scene coordinator or in the absence of timely response by any other party. In fact, the Federal Government's cleanup and containment capability is viewed as something of an appeal of last resort in the absence of any other adequate and timely response, if my understanding is correct.

Mr. RANDOLPH. Yes, the Senator understands the intent of the bill correctly.

Mr. BRADLEY. In the event I have described, where a State or a contractor of the State is the respondent to the release and incurs economic loss normally compensable under the provisions of this bill, does this legislation intend that a State that has continued to collect taxes or fees to finance a State fund designed to cover expenses and economic loss not covered under the provisions of this bill have the right to use those State fund moneys to provide intermediate, up front capital to pay for these activities and seek reimbursement from the fund established under this bill?

Mr. RANDOLPH. Nothing in the language or intent of this bill would prohibit a State from using its fund for the purposes you have inquired about. The purpose of this legislation is simply to preempt double taxation of the substances enumerated in the bill for the purposes of compensation of the covered damage. The situation described in your inquiry is a question of bookkeeping rather than a subject of preemption. The expenditures by a State from its fund are temporary in nature and would be reimbursed and therefore ultimately paid from the fund established in this legislation.

Any damage not reimbursed by this bill fund may similarly be the proper subject of a State fund if a State so chooses to construct its fund. Finally, this bill is not retroactive in its preemption. The preemption provision will take effect 180 days after the enactment of this bill. Any funds collected or generated by a State fund prior to this date may be spent under the provisions and coverage of the appropriate State guidelines without conflict with this bill.

Mr. BRADLEY. Mr. President, I thank the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, let me state categorically that there is nothing in this bill that affects the uses to which a State may put the existing cleanup fund. This bill is silent on that subject. Thus a State may, after enactment of this bill, continue to spend its existing funds for any purpose that is lawful under the State law.

If, after enactment of this bill, a State continued to pay claims from a State fund, that would not be contrary to any provision of this bill. What this bill does is prohibit a State from requiring any person to contribute to any fund if the purpose of that fund is to compensate for a claim paid for under the provisions of this bill. Thus the State cannot receive a fee or a tax on a substance if that fee or tax is to go into a fund and the fund is for the purpose of paying oilspill damage claims.

Putting it simply, this is a prohibition against double taxation for the same purposes. It is not a prohibition on the uses that a State may make of its money, nor does it prohibit a State from im-

posing fees or taxes for other purposes connected with cleanup or restoration activities such as the purchase of pollution abatement equipment or the hiring or training of personnel for pollution prevention programs.

In summary, Mr. President, this preemption provision is narrow in scope and limited to the particular purpose of preventing double taxation.

Mr. BRADLEY. Am I correct in assuming that moneys expended by State funds can be used to provide the required 10 percent State match?

Mr. RANDOLPH. That is correct.

Mr. BRADLEY. And am I also correct in noting that State funds are preempted only for efforts which are in fact paid for by the Federal fund and that there would be no preemption for efforts which are eligible for Federal funds but for which there is no reimbursement?

Mr. RANDOLPH. That is correct.

Mr. BRADLEY. Finally, if the Federal Government determines that the needs at other sites require that Federal efforts be terminated at the first site before that site is completed, may a State fund complete the effort?

Mr. RANDOLPH. This legislation would permit that to happen.

● Mr. CANNON. Mr. President, on September 24, 1980, I submitted a number of amendments which I indicated would be introduced when the superfund legislation (S. 1480) was called up for consideration. These amendments, which respond to the concerns of the Commerce Committee, were developed as a result of our hearings on this important legislation. Additional amendments relating primarily to transportation issues were offered on September 26, 1980, by my colleague from New Mexico, Senator SCHMITT. These amendments have been printed and are reproduced in the RECORD of September 24, 1980, and September 26, 1980, respectively.

The Commerce Committee was particularly concerned about such matters as the broad application of certain provisions to transportation and commerce and the burdens which such application would impose. We suggested a definition of transportation which would not impose unnecessary and duplicative information-gathering requirements on the transportation sector. In order to avoid imposition of liability on carriers without appropriate notice, our amendments would coordinate the designation of materials as hazardous under the Hazardous Materials Transportation Act with the corresponding designation of hazardous substances under S. 1480. Another amendment I proposed would assure equal treatment of all modes with regard to treatment of exhaust emissions and would avoid the overly broad notification and other requirements for releases.

The Committee on Environment and Public Works has now had an opportunity to review the amendments addressing Commerce Committee concerns. An accommodation has been reached; the compromise legislation under consideration today contains changes which we believe satisfy the problems relating to the concerns of the Committee on Commerce, Science, and Transportation. Of particular importance are the changes in the area of preemption [Sec.

114] and the addition of limits on liability for releases involving motor vehicles, aircraft, pipelines, or rolling stock. In addition, the new language in **section 107(c)** requires the President to issue regulations establishing limits on liability (within the statutory parameters) for various types of facilities. When regulations are called for, as here, and the subject matter concerns transportation, it is my understanding that the Department of Transportation will be actively involved in developing and implementing such regulations.

We are extremely pleased that this matter has been worked out. I strongly support the goal of making our environment safer from pollution by hazardous substances, but this goal must be carried out carefully in order not to have unintended and potentially disastrous impacts on the commerce of this country. It is for that reason that we drafted and submitted amendments responding to concerns raised in Commerce Committee hearings. Now that the legislation has been modified to alleviate these concerns, I am able, as chairman of the Commerce Committee, to report that I have no objection to passage of the superfund bill in its present form.●

Mr. DOLE. Mr. President, I would like to congratulate the parties to the negotiations on the superfund legislation, which have produced a bill that I believe has a good chance of passage this afternoon. There was a spirit of cooperation and common concern on all sides that contributed greatly to the successful outcome: This is a case where diligent efforts paid off, and I am pleased with the result.

This was not the case a few days ago, and not too many hours ago.

I suggest that it is a matter that deserves the consideration of the Congress this year.

I think the distinguished chairman of the Finance Committee helped the Finance Committee move very promptly when they had S. 1480 under consideration and reported it out the same day, the very first day of the deliberations by the Senate Finance Committee, in an effort to speed up the process and give the full Senate and those with a particular interest a chance to negotiate and work out some compromise. This has been done by the distinguished Senator from Vermont (Mr. STAFFORD) and the distinguished Senator from West Virginia (Mr. RANDOLPH), along with a number of others, including the distinguished minority leader (Mr. BAKER).

I would particularly like to note the role played by the distinguished Senator from New York (Mr. MOYNIHAN), who serves very ably on both the Environment Committee and the Finance Committee. Senator MOYNIHAN has performed a valuable function due to his knowledge of the input both committees have had on this legislation.

The bill we have before us today is a reasonable, well-balanced approach to the problem of hazardous wastes. The bill provides a comprehensive scheme for cleaning up abandoned waste sites and dealing with future spills. In addition, the bill authorizes the cleanup fund to compensate for damage to natural resources where the public interest is involved [Sec. 111]. These are all areas where there has been a consensus on the need for action and on most of

the particulars of the legislation needed to deal with the problem. For this reason I believe that if we approve the compromise bill, as I believe we should, the House of Representatives is likely to agree to the legislation when they return from Thanksgiving recess.

Mr. President, I appreciate the fact that there are those who would have preferred a broader bill than the one we have before us. But I believe we have chosen the right course by working from the consensus that has existed for some time on the need for legislation to clean up abandoned waste sites. At this late date in the legislative session, the point is not to quibble over every detail, but to find the best way to expedite a bill that has broad support.

I have said before that I support legislative action this year to clean up abandoned waste sites and deal with future spills, and I am glad that the prospects for passing such legislation have increased due to developments in the past week. There can be no question about the urgent need to deal with hazardous waste sites: The numerous potentially hazardous sites that the Environmental Protection Agency has located throughout the country are a measure of the magnitude of the problem. No one disputes that it is a serious problem, nor does anyone doubt that reponsible Federal action is needed to protect present and future generations from the dangers to health and safety that Love Canal has come to typify for many Americans.

At the same time, Federal action must be responsible, and carefully calculated to deal with the immediate problem in a realistic and cost-effective way [Sec. 104]. I believe the compromise superfund bill will do that. It strictly limits damage claims that may be paid out of the fund, thereby avoiding the danger that we might create a liability system of unknown dimensions that could threaten future efforts to maintain tight fiscal control over the Federal budget. In addition, we avoid creating a conflict with existing programs of disability insurance, such as social security disability.

The compromise package also imposes limits on the discretion of those administering the response mechanism, to insure that reasonably cost-efficient actions are taken, and that the response to a given problem is shaped with regard to the entire range of problems covered by the fund and to the overall limit on the fund. It also makes sense to incorporate a definition of strict liability that will serve as a uniform standard in determining liability for cleanup and other costs, and this has been achieved by reference to the Clean Water Act [Sec. 101(32)].

Mr. President, all in all, I believe the compromise package that has been put before the Senate is a good one, drafted with careful attention to the concerns of all the parties interested in this legislation, and structured to reflect a balance between the concern we all share over hazardous wastes, and the no less compelling need to create a self-financing mechanism that protects the fiscal integrity of the Federal Government. This is a measure that deserves our support.

So I suggest that we have had a chance this afternoon in the Senate Finance Committee to take a look at the section dealing with the tax. As far as this Senator is concerned, I would have liked to strike out the section with reference to borrowing authori-

ty [Sec. 223(c)]. But, under the constraints, and I do not quarrel with that, amendments can be offered, but they would be opposed by the leadership, based on an agreement reached on Friday.

Mr. President, my proposed amendment would have eliminated any authority of the hazardous waste cleanup fund to borrow from general revenues of the Federal Government. I believe the parties to the superfund compromise have done excellent work, and they have proposed a bill that is sensibly limited in scope and has a good prospect of being a self-financing mechanism. However, the parties to the compromise did not really focus on the details of the proposed title II, the title that actually imposes the tax and establishes the fund.

I believe it would be consistent with the goals set by the compromise bill to strike the provision in title II that allows the fund to borrow from the Treasury. The borrowing provision was originally designed for S. 1480 as reported by the Environment Committee. That bill has now been significantly modified by the negotiations of the past few weeks, and we have a bill before us that ought to provide a self-financing mechanism for hazardous waste cleanup. Accordingly, there should be no need to provide borrowing authority. If there is reason to doubt that the fund will be self-sufficient, then we should work to tighten up the provisions of the bill. If the fund is self-contained, then it should not need to resort to borrowing from general revenues.

Mr. President, I support this bill and the effort that has gone in to working out a reasonable compromise. I would just point out that the question of borrowing authority was not addressed in the context of the recent negotiations, and I feel confident that many of the Senators who were involved in the negotiations would agree with what I am proposing. We have worked hard in recent days to insure that the superfund will not impose costs on the general public far beyond the current estimates.

We have tried to develop a proposal that meets an urgent need but limits the risk of abuse. To allow recourse to the Federal Treasury to supplement the fund would be an admission that we are uncertain as to the success of our efforts. This is not a criticism of the pending proposal: I believe the proposal is a good one. I simply suggest that the borrowing authority is a loophole that ought to be closed, and which is inconsistent with the compromise bill as agreed to by the negotiators. If for any reason experience with the fund indicates that there is a need for such authority—and I trust that will not prove to be the case—it can always be provided for when that determination is made. Until then let us assume that we have a solvent fund.

In the event there should be a conference on this proposal, it would be the hope of the Senator from Kansas that they would adopt the House language in reference to borrowing.

It seems to me that if, in fact, this is to be a self-financing program, we should carefully restrict any borrowing authority after the first year.

This Senator can understand the necessity for borrowing authority in the first year from the Treasury against the fund. But I doubt the wisdom of that in subsequent years unless, of course, there

were some catastrophic occurrence that would require some special treatment.

I ask unanimous consent to have printed at this point in the RECORD a copy of the amendment that I will not propose, but which I contemplated introducing with reference to borrowing authority.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

Section 223, as proposed to be inserted by the amendment, is amended by striking out subsection (c).

Section 232(c), as proposed to be inserted by the amendment, is amended by striking out all that follows "section" the second place it appears and inserting in lieu thereof a period.

Mr. DOLE. Finally, Mr. President, there has been, as will be discussed later, some discussion of technical amendments, and those will be offered at the appropriate time by the distinguished floor manager of the bill [Sec. 211].

One that I think is technical in nature is with reference to the fertilizer exemption. I was prepared to offer an amendment to exempt from the tax chemicals used in the production of fertilizer, to make that permanent.

I believe there has been some agreement on that as a technical modification. There will be a number of others offered at a later time by the manager of the bill.

Mr. President, the technical modification I refer to is to title II of the superfund compromise bill. My amendment simply provides that the exemption from the tax for chemicals used in the production of fertilizer shall be permanent. As presently drafted, the amendment expires after 1983, and chemicals used in fertilizer production would be taxed, albeit at a lower rate.

Some may say that a tax for a period of 2 years is not much of a hardship. That may be true, but taxes once imposed tend to stay in place for a long time, regardless of the original intent Congress may have expressed. There was a time when the Federal income tax was regarded as a temporary phenomenon. We should be realistic enough to acknowledge that there is a good chance that any chemicals taxed under this bill are likely to stay taxed for quite a while. Therefore it is important that we take the time now to see that appropriate substances are taxed, and that appropriate substances are exempted.

Mr. President, I would like to point out that the Senate Environment Committee, in its report on S. 1480, found that it was highly unlikely that the fertilizer production industry would impose significant costs on the fund. In other words, it appeared unlikely that fertilizer chemicals would contribute significantly to the hazardous waste problem that this legislation addresses.

The fertilizer industry testified to the Environment Committee that it has not contributed to the problem of abandoned waste sites, nor was it a likely contributor to the spill problem. If our criterion for the tax is whether the producer contributes to the hazardous waste problem; and I believe it should be; then fertilizer chemicals ought to be exempted altogether.

But there is another consideration as well. No one knows for certain what the impact of this tax will be on the economy as a whole, or on particular sectors of the economy. The EPA estimates that

the impact on the economy will be minimal, and that may be true in many instances. But in the case of the agricultural community, we have to consider that any increase in the financial burden on farmers poses real risks. Farming is more sensitive to the ups and downs of the economy, of weather, and of the international situation. Another unpredictable factor is the last thing farmers need.

Mr. President, I believe my amendment is a good one. The impact on the total structure of the tax is not significant, and the taxes can readily be adjusted to reflect the change.

Mr. President, I think we are awaiting the arrival of the distinguished Senator from Pennsylvania (Mr. HEINZ) concerning an amendment that he will discuss.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, I ask for recognition.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. RANDOLPH. Mr. President, the chairman of our Subcommittee on Resource Protection, the Senator from Iowa (Mr. CULVER), has worked not only in past weeks but also in past months and past years on the subject matter that is being discussed this afternoon. I am delighted, personally and for the committee, to recognize his leadership in these matters. I had hoped that he would speak this afternoon, and his schedule has accommodated itself to that at this time. I yield such time as he may desire to the Senator from Iowa.

Mr. CULVER. I thank the distinguished chairman.

At the outset, I commend the distinguished chairman and the ranking minority member of the committee, Senator STAFFORD, for the outstanding leadership they have demonstrated in working out this compromise on this important legislation. I also express my appreciation to the members of the Finance Committee, who also worked very hard to bring about this important occasion.

Mr. President, the need for this legislation first became apparent to many of us when serious health problems were uncovered as a result of chemical leakage at the Love Canal dump site in Niagara Falls, N.Y. But the magnitude of the problem goes far beyond that one site. EPA has documented damages at 250 known hazardous chemical dump sites. Chemical contamination of groundwater has been found at 130 of these sites. The only major water supply for the eastern third of Iowa has been threatened by leaking waste along the Cedar River.

The Committee on Environment and Public Works has become aware that the scope of toxic chemical releases is far broader than dump sites, and that the impact of these releases is much more pervasive than the health problems suffered by communities around dump sites.

Among the major incidents have been: The kepone release which contaminated the James River in Virginia, closing a $2 million a year commercial fishing ground; the PCB dumping that decimated

commercial fishing in the Hudson just when it was coming back from other pollution problems; and the sacrifice of about $100 million in livestock and dairy products due to contamination of cattle feed in Michigan. Other instances of chemical contamination have recently occurred. In water-short California, 52 wells supplying water to nearly 400,000 residents of the San Gabriel Valley were found to contain up to 600 parts per million of trichloroethylene (TCE) which is poisonous and causes cancer. Just last month, 40 square miles of fishing grounds were closed due to a PCB spill in St. Bernard's Parish, La. Because of the number of incidents like these, the Senate decided in the last Congress that a much larger fund, financed primarily by industry, was needed to respond to spills and to pay some victim damages.

The chemical industry has downplayed these individual incidents, and at one time the Chemical Manufacturers Association testified that the Environmental Protection Agency had evidence of only 60 chemical spills per year in its files. Our committee asked EPA to search its files and verify what evidence was actually there. Last January, we received documentation of 3,076 voluntarily reported hazardous substance spills in the 2-year period between October 1977 and September 1979.

The chemical manufacturers have said that the real problem is just so-called orphan dump sites, and in one press release said that only 431 sites across the Nation were "potentially hazardous." But the EPA has cataloged nearly 6,000 disposal sites where further investigation is needed, and is adding 200 more a month.

A survey by Congressman ECKHARDT, in which the Nation's 53 largest chemical companies cooperated, found 1,100 disposal sites, holding about 100 million tons of chemical wastes which are not subject to any regulatory control under existing law.

The Committee on Environment and Public Works also sought to document actual damages which have occurred due to mishandling of chemicals. At the request of former Senator Muskie, the Library of Congress compiled a 246-page catalog titled "Resource Losses From Surface Water, Groundwater, and Atmospheric Contamination."

This catalog of damages identifies thousands of well closings or major fish kills as a result of chemical contamination. The catalog cited estimates that half of the potential fishing in the Great Lakes is lost annually due to contamination-related curtailments. The Hudson, Susquehanna, the James, the Delaware, and the Shenandoah Rivers, among others, are seriously polluted by chemicals.

Moreover, the catalog did not include agricultural losses resulting from feed contamination, or contamination by livestock or food. Food losses were discussed in another report, "Environmental Contaminants by Food," issued by the Office of Technology Assessment last December. Only six States responded to OTA's question about economic losses due to food contamination. Those six States reported a staggering $282 million in losses over a 10-year period.

The most important concern of this bill is the effect that chemical releases are having on public health. The Under-Secretary of Health and Human Services, Nathan Stark, said in a letter transmitting a Surgeon General's report to our committee:

The Surgeon General believes that, while at this time it is impossible to determine the precise dimensions of the toxic chemical problem, it is clear that it is a major and growing health problem. We believe that toxic chemicals are adding to the disease burden of the United States in a significant, although as yet, ill-defined way. In addition, we believe that this problem will become more manifest in the years ahead . . . We believe the magnitude of the public health risk associated with toxic chemicals will continue to increase until we are successful in controlling the introduction of these chemicals into our environment.

It is our hope and belief that full implementation of recent environmental control legislation will sharply reduce the introduction of toxic chemicals and, subsequently, the exposure of our people to such chemicals. We believe, however, that through this decade we will have to confront a series of environmental emergencies . . . Control of the future introduction of chemicals will not in itself be sufficient to address this major health problem. Serious efforts will have to be made to provide for the identification and cleanup of existing sources of toxic chemical contamination.

In summary, our committee documented that at least 3,076 chemical spills have occurred during the past 2 years; that EPA is investigating nearly 6,000 dumping grounds as suspected or known hazards to public health or resources; and that thousands of impoundments are potential threats to water supplies. The public health is being damaged, irreplaceable water supplies are being lost, and hundreds of millions of dollars worth of crops, livestock, and foodstuffs are being rendered inedible by mishandling of chemicals and their wastes.

To meet these problems, the Committee on Environment and Public Works reported out S. 1480, "The Environmental Emergency Response Act." I am the principal sponsor of this bill.

Its purposes are to provide a way for the Government to rapidly clean up and mitigate chemical disasters, to assure injured victims prompt and adequate compensation, and to create an incentive for both a high standard of care and for a responsible party to clean up its own releases.

The committee bill has four basic elements to achieve its goals. First, it makes those who release hazardous substances strictly liable for cleanup costs, mitigation and third-party damages. Thus, it assures that the costs of chemical poison releases are borne by those responsible for the releases [Sec. 107].

Second, the committee bill establishes broad Federal response authority [Sec. 104] and a $4.1 billion fund to clean up and mitigate damages where a liable party does not clean up or cannot be found [Sec. 221].

Third, the committee bill provides an opportunity through the courts, and a more limited opportunity through the fund, for victims to receive prompt and adequate compensation for losses and injuries where the responsible party has not settled the claim.

Fourth, the fund is financed by those industries and consumers who profit from products and services associated with the hazardous substances which impose risks on society [Sec. 211].

As chairman of the Senate Resource Protection Subcommittee in the current Congress, I have worked hard during the last 2 years to develop a strong superfund bill to protect individuals and the environment from chemical leaks and spills. The Environmental Emergency Response Act, which I introduced with Senator Muskie in July 1979, provided the comprehensive protection needed to deal with this serious and growing problem.

I would have preferred to see a strong bill like the Environmental Emergency Response Act enacted into law. However, I understood that its enactment during the postelection session was not feasible. Therefore, after consultation with Chairman RANDOLPH and Senator STAFFORD, the incoming chairman of the Committee on the Environment and Public Works, I supported the compromise superfund bill introduced last week, and urged several of my colleagues to support it.

Further negotiations and compromises on this new bill have continued during the last several days. Since I will not be serving in the next Congress, I believed it was more appropriate for Chairman RANDOLPH and Senator STAFFORD to head the effort to determine whether an effective superfund compromise can be enacted before the 96th Congress adjourns, or whether action should be put off until a new Congress convenes in January. I respect their judgment that it is preferable to complete action on this critically important subject at this time.

The dangers posed by toxic and hazardous chemicals must be effectively dealt with, and I hope the enactment of this legislation will enable the States and the Federal Government to begin to remedy the effects of the spread of toxic and hazardous substances quickly and effectively.

Mr. HEINZ. Mr. President, the substitute before us contains, on page 100, section 242, "Tax Treatment of Industrial Development Bonds Issued to Finance Pollution Control or Waste Disposal Facilities."

This is an amendment that I have urged upon my colleagues for inclusion in this legislation. In my judgment, the amendment is critical to furthering the provisions of current law, which, if the provisions of current law were dutifully enforced by the Internal Revenue Service as Congress intended, would eliminate the need for the amendment and, indeed, would go a long way toward eliminating the need for a massive superfund.

As you know, in 1976 Congress passed the Resource Conservation and Recovery Act to provide a cradle-to-grave manifest system for controlling the handling of hazardous wastes. This act was intended to prevent—before the fact—the types of environmental emergencies that we are now creating a massive superfund to clean up after the fact. Unfortunately, the regulations necessary to implement this act were tied up in the bureaucracy at EPA for 4 years and are just now taking effect.

To ease the regulatory burden on industry imposed by this and other environmental laws, Congress has also provided limited tax incentives for installing pollution control equipment under sections 103 and 169 of the Internal Revenue Code. Both of these provisions—section 103 (dealing with tax-exempt industrial development bonds) and section 169 (dealing with 5-year amortization)—reflect a recognition that investment in pollution control and solid waste disposal facilities is necessary to attain desirable social goals and to fulfill the mandates of environmental laws. These tax code provisions also reflect a recognition that such investments are not productive in the sense that they do not result in increased output or efficiency of operations.

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Through regulation, and over the objections of the Environmental Protection Agency, the IRS has so narrowly interpreted section 103 of the code as to thwart the will of the Congress. Specifically, the IRS has:

First. Ignored the fact that Congress has amended the Solid Waste Disposal Act to regulate hazardous waste as well; instead, the IRS has held the definition of solid waste constant to that contained in the original act;

Second. Limited eligible financing to end-of-the-pipe, "black box" technologies while ignoring the fact that current environmental law recognizes and indeed encourages the role of process changes in abating pollution.

Before explaining the provisions of my amendment in greater detail, let me cite a few statistics that dramatize the need to maintain existing tax incentives for pollution control. These incentives are necessary to insure that expenditures for pollution abatement do not jeopardize the ability of American industry to make the productive capital investments necessary to modernize facilities, create jobs, expand production, maintain and enhance international competitiveness, improve productivity, and reduce inflation.

Consider, for example, the percentage of all plant and equipment expenditures that pollution abatement investments in 1978 represented for the following basic U.S. industries: Steelmaking—16.8 percent; chemicals—7.1 percent; petroleum—8.3 percent; and utilities—10 percent. The potential for a capital shortfall in the coming decade is clear. In the case of the steel industry, for example, the American Iron & Steel Institute has estimated, based upon a report by Arthur D. Little, Inc., that total environmental control expenditures for the next decade may reach $7 billion.

None of these figures includes the billions of dollars in additional taxes to be imposed as a result of the superfund legislation. In imposing this massive additional tax burden on American industry, we need to insure that the provisions of the tax code that are intended to encourage investment in socially desirable pollution control equipment are in fact available.

Based upon communications I have had with the National Solid Waste Management Association, the National Coal Association, the Council of Pollution Control Financing Agencies and a host of individual companies, I fear that proposed IRS regulations under section 103 of the code will all but preclude this type of financing in the future.

My amendment addresses this concern by:

First, making clear that process changes that prevent the creation of pollution are eligible for tax-exempt financing;

Second, providing for certification of eligible pollution control facilities by the Environmental Protection Agency and State environmental control agencies;

Third, containing safeguards to insure that only that portion of any facility that actually represents a pollution control expenditure qualifies for tax-exempt financing; and

Fourth, making expressly clear that in amending the Solid Waste Disposal Act with the Resource Conservation and Recovery Act, Congress intended that non-nuclear hazardous waste management facilities should also qualify for section 103 financing.

Let me briefly explain each of these provisions.

Process changes eligible for section 103 financing:

Proposed IRS regulations limit section 103 financing to "black box," end-of-the-pipe technologies that represent discrete units; ignoring the demonstrated potential for process changes to prevent the creation or discharge of pollutants. Current environmental law recognizes and indeed encourages the role of process changes in abating pollution. In fact, such process changes could even be required under best available technology requirements.

From a public policy standpoint, it makes no sense to provide tax-exempt financing, for example, to a utility installing a scrubber to reduce emissions, while denying such financing to fuel pretreatment such as coal washing that also reduces emissions, at less cost and with less of an adverse impact on efficiency of operations.

My amendment would make clear that such process changes can qualify for tax-exempt financing. So that this provision cannot be interpreted as a "blank check" to qualify all plant modernizations, I submit the following list of process changes and facilities that might be expected to qualify for section 103 financing.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. HEINZ. This list is by no means exhaustive: We must avoid locking in potentially obsolete technologies by statute. At the same time, it is intended to provide the IRS with some guidance in determining what sorts of pollution control facilities Congress intends to qualify.

CERTIFICATION BY ENVIRONMENTAL CONTROL AGENCIES

As is already the case under section 169 of the Internal Revenue Code, the certification that a facility was installed to meet or further Federal or State requirements for abatement or control of water or atmospheric pollution or contamination would be made by the Environmental Protection Agency or the corresponding State enviromental control agency. The certifying agency would also have to certify that the portion of the expenditure eligible for tax-exempt financing would not be made but for the purpose of abating, controlling, or preventing pollution.

SAFEGUARDS LIMITING TAX-EXEMPT FINANCING

I am sensitive to the concern that in qualifying process changes for this type of financing, we run the risk of also qualifying plant modernizations that have as an incidental effect the reduction of pollution. My amendment contains several safeguards for insuring that tax-exempt financing is limited to facilities or portions of facilities the expenditures for which are clearly for pollution control. Two of these safeguards I have already referenced: The list of eligible facilities and process changes, and the requirement for certification by environmental control agencies that the expenditure would not have been made but for Federal or State environmental control requirements.

An added safeguard is a formula for reducing the amount of financing eligible for tax-exempt financing to the extent that portions of the cost of a certified pollution control facility are recover-

able in the form of economic benefit. The tax exemption would not apply to the portion of the proceeds of the bond issue that exceeds the amount by which the cost of acquiring, constructing, reconstructing, or erecting the facility exceeds the net profit which may reasonably be expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its actual useful life. A formula for calculating this net profit is also set forth in the statute.

Although a final revenue loss estimate has yet to be prepared, EPA has informally calculated that the first year revenue loss due to the changes I propose would be approximately $94 million in the first year. I ask unanimous consent that a recent letter from EPA regarding the revenue impact of this measure be inserted in the RECORD.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 2.)

QUALIFYING NONNUCLEAR HAZARDOUS WASTE MANAGEMENT FACILITIES

Mr. HEINZ. Although Congress has amended the Solid Waste Disposal Act with the Resource Conservation and Recovery Act to require safe "cradle-to-grave" handling of hazardous waste, the IRS has held the definition of solid waste to the obsolete definition contained in the original act.

My amendment would make eligible for section 103 financing facilities necessary for compliance with the hazardous waste management provisions of RCRA, including on- and offsite resource recovery and profitmaking recycling. The facilities that would be expected to qualify under this provision are set forth in the list I previously referenced.

(See exhibit 1.)

In closing, Mr. President, I can think of no more appropriate place to clarify congressional intent with respect to tax-exempt pollution control financing than this superfund bill, which I fully support and which is necessary to protect the health and safety of our citizenry, but which will impose massive additional taxes on an American economy already overburdened by taxation. I urge its swift adoption.

[Exhibit 1]

FACILITIES AND PROCESS CHANGES ELIGIBLE FOR TAX-EXEMPT INDUSTRIAL DEVELOPMENT BOND FINANCING PURSUANT TO SECTION 103(b) OF THE INTERNAL REVENUE CODE

Eligible facilities and process changes shall include, but not be limited to, the following:

COAL MINING AND COMBUSTION

Coal washing and preparation to reduce sulphur emissions;

Fluidized bed boilers;

In mining operations, water diversion ditches that prevent natural water run-off from mingling with mining operations, becoming contaminated, and exiting as run-off pollution.

METALS

In metal "pickling" processes, equipment to convert sulphuric acid to hydrochloric acid, permitting acid regeneration and avoidance of waste treatment and sludge disposal expense.

INDUSTRIAL PRINTING

Equipment to convert water-based paints, thereby avoiding air pollution that occurs from dried solvents dispersing through stacks.

PAPER INDUSTRY

Recovery boilers and their associated precipitators, black liquor oxidation systems, and black liquor evaporation systems.

BREWING INDUSTRY

Dust control equipment;
Spent grain liquor evaporators.

SOLID WASTE MANAGEMENT

Landfills;
Landfarms;
Transfer stations;
Incinerators without heat or energy recovery facilities.
Incinerators with heat or energy recovery facilities;
Compaction equipment (shredders, balers, and compaction equipment);
Transportation vehicles used to implement the collection and disposal functions.

HAZARDOUS WASTE MANAGEMENT

(Same list as solid waste management but also:)
Deep injection wells;
Storage facilities;
Treatment facilities.

PETROLEUM INDUSTRY

Facilities to strip sulphur from gas streams to be combusted at the refinery;
Facilities to transport waste water to regional waste control facilities;
Floating roof storage tanks.

[Exhibit 2]

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., August 22, 1980.

Hon. JAMES R. JONES,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. JONES: This is in response to your letter of July 11, 1980 to the Administrator, requesting EPA's opinion on the desirability of making industrial development bonds (IDBs) available for financing pollution prevention activities. While EPA cannot speak for the Administration on the change you suggest, we are interested in it from an environmental standpoint because we believe it would help eliminate the current bias in our tax policy toward "end-of-pipe" pollution control.

By prohibiting the use of IDBs to finance facilities that prevent pollution, the IRS regulations provide a significant economic incentive to control pollution through "end-of-pipe" technologies. If we subsidize these technologies, then we also should afford similar financing alternatives for prevention activities. Our concern is that the IRS regulations may prompt a firm to invest in a less efficent approach (e.g., end-of-pipe control) simply because the after-tax cost is less than that for a more efficient approach (e.g., prevention technology).

The current IRS regulations also prohibit the use of IDBs to finance investments in process changes that may reduce or eliminate pollution. Again, we are concerned that this may cause private firms to select less efficient technologies for reducing pollution.

Expanding IDBs to cover process changes, however, may present administrative difficulties to IRS. Since IDBs should not be used to finance an entire investment in new process technology the problem is how to estimate the amount of the investment that goes toward pollution control. We have developed a rather straight forward approach for addressing this problem, but it may require that IRS agents collect more data than is now available to them. We propose that the difference in cost between the old and new facilities (on a current dollar basis) be considered as pollution control costs. Differences in rated capacities and economic benefits of the facilities complicate the calculation, but we think it is possible to make adjustments to the calculation to take such differences into consideration.

We are working very closely with IRS and Treasury to examine the feasibility and desirability of expanding coverage of IDBs to include prevention and process change technologies. We believe Treasury could handle this matter within their statutory authority.

We have made some very preliminary estimates of the likely losses to Treasury caused by extending the coverage of IDBs to both prevention and process change technologies. IDBs currently are used to finance $3 billion of an estimated $7 billion of annual expenditures by industry on new plant and equipment for pollution abatement. Using $4 billion as an upper limit for additional IDB financing in combination with reasonable assumptions regarding interest rates and marginal tax rates, yields an estimated annual tax loss of $94 million. However, in the second year of expanded IDB financing, the tax loss would be doubled (i.e. $188 million), in the third year it would triple, etc. In present value terms, the annual tax loss would amount to about $860 million.

We are working with Treasury on this matter and will ask them to provide us with more accurate estimates of the likely revenue loss as we develop specific detailed proposals.

Sincerely,

WILLIAM DRAYTON, Jr.,
Assistant Administrator for Planning and Management.

Mr. HEINZ. Mr. President, let me get to the nub of the question.

Congress enacted two sections of law: Section 103 providing tax-exempt industrial bonds for the purpose of installing air and water pollution control equipment, and section 169 dealing with the amortization of such expenses. It was contemplated by Congress at that time, as I have gone back through the legislative history, that what we wanted to do was this: When the Government came along and said you had to do something when there was, in effect, a Government mandate or requirement, you would be eligible for tax-exempt issuance of bonds through the appropriate authority, so that you could have access to capital at a reasonable cost—all the more critical, of course, when the cost of capital is going out of sight.

Through the internal decisionmaking process, by a group of people downtown, the Internal Revenue Service, it is this Senator's judgment that the intent of Congress has been frustrated; because what the Internal Revenue Service has done, by fiat, is to say that if you are putting in toxic waste disposal or control equipment, you are not eligible for the kind of tax-exempt industrial bond financing for which you would be eligible if you were polluting the air or the water.

I am not in favor of polluting the air or the water, but neither am I in favor of killing people with toxic wastes. I am not in favor of Love Canal and all the very dangerous substances, including dioxin, that have been found in the Love Canal in New York State.

We are talking about something that is every bit as critical if not more so than cleaning up the kind of air and water pollution that is such a threat. This Senator knows perhaps better than most what kinds of threats are involved in air pollution because it was

in this Senator's home State at Donora a number of years ago that the air got so polluted there was a temperature inversion, sulfurous rain fell from the sky, and numerous people died. Toxic waste is every bit as potentially dangerous as what happened in Donora a number of years ago.

I feel very strongly about the need for this amendment. I had attempted during last week to contact most of the Senators who I thought were going to be interested in this amendment, and indeed I got general expressions of support from a large number of my colleagues. I know that Senator STAFFORD and Senator RANDOLPH favored this in principle. But in the final analysis it is very important that the Finance Committee to which I belong be equally as supportive of the amendment as I and the colleagues I have mentioned and the others, which includes some other members of the Finance Committee.

I am told that the Treasury Department, which I seem to recollect is the umbrella agency for the Internal Revenue Service the last I looked, does not like my amendment and that is because there is a Treasury objection that my amendment should not be included as section 242 of this bill.

Mr. President, I wish I could count on my fingers the number of times when the Treasury has objected to a provision that one of us on the Finance Committee has offered that we took that to be a compliment because so often when the Treasury objects all they are interested in doing is increasing revenues which means in English increasing taxes.

We all know that the tax burden is high enough and what we should be doing is finding ways of reforming it and reducing it, particularly where valid social concerns are going to be met.

But notwithstanding all of that, and I submit this amendment does meet the test of helping to meet valid social concerns, the Treasury has an objection.

The reason that creates a problem here, I am told, is that there are some people who feel that this amendment is not properly germane to this legislation.

First of all, it happens to be at this point in the substitute and I do believe that it is germane. It talks to hazardous waste, to toxic waste, and I do not know what could be more germane, and it seems to me that what I propose must be dealt with either now or at some later date, but dealt with surely and with a sense of certainty that we will deal with it.

I am told that if this section stays in the bill as it is we are not going to have a bill. If that is really the case, and I have had several Senators say to me that that is the case, I am willing to do what I have to do to move this legislation along because I want a superfund bill, but I wish to do so only if there are some pretty clear assurances as to what is going to happen should I decide to withdraw the amendment from the bill.

So I propound the question to the principals most concerned with section 242 remaining in the bill, Senator LONG and Senator DOLE, what plans they would have and under what circumstances and under what kind of timetable to facilitate the rapid consideration and enactment of this legislation?

Mr. LONG. Mr. President, as the Senator knows, this matter was discussed in the Finance Committee. In view of the fact that Treasury had a strong objection to the measure, it was felt by the Senators on the committee, the chairman in particular, that we should not add it to some other measure because it would be objected to. In view of the potential for a single Senator to kill a measure this late in the session by simply protecting his rights to suggest the absence of a quorum or to make a speech, do various and sundry things that might appeal to him, dilatory or not dilatory, as the case may be, any single Senator could prevent it from becoming law this late in the session. The amendment could kill the bill to which it was attached.

So, the Senator from Louisiana made the point that the amendment should not be added at that time to one of the bills that at that point were in the Finance Committee.

For all I know, the Senator may be 100-percent correct. I am not here to argue the merits with him about the amendment. He might be 100-percent correct on everything he said here.

If that is the case, in view of the objection we have from the Treasury this matter should be considered next year. As far as I am concerned the sooner the better. It may very well be that the next Secretary of the Treasury and the next Commissioner of Internal Revenue might see it the way that the Senator from Pennsylvania sees it. If they do, as far as I am concerned, if they want to change their position at the Treasury that will be all right. A new man is coming in, and for all we know the new man may be one who has been Secretary of the Treasury before, who had a lot of experience down there, or an Under Secretary, who had much experience in the area of that sort.

In any event, if the new Secretary of the Treasury wanted to simply change the Treasury position on the matter, that would be all right with the Senator from Louisiana. I would have no objection. If the Treasury position remains as it is now. I would think that the Senator would want to pursue this matter legislatively, if he did as far as I am concerned, I think we should hold a hearing to let the Senator explain his views and to let the Treasury explain theirs. We could research the matter somewhat in greater detail to establish if the Senator can that he is correct about the matter to further buttress his arguments and see what the Treasury can offer to support theirs, and simply decide it, vote one way or the other, and submit the matter to the Senate for decision.

Next year the Senator from Louisiana will not be chairman of the Finance Committee. I suspect the Senator from Kansas (Mr. DOLE) will be the chairman of the committee and I would be very disappointed if he were not chairman of the committee because he has waited his turn in line for quite a while. He is entitled to it, deserves it, and as far as I am concerned, he is my candidate for the next chairman of the Finance Committee. So I hope that the Senator from Kansas (Mr. DOLE) would see that the matter was considered early in the session next year and see that the Senator is offered a chance to resolve the matter legislatively in the event that the new Secretary of the Treasury and those who are appointed with him did not agree with the Senator from Pennsylvania.

Mr. DOLE. Mr. President, will the Senator yield to me?

Mr. HEINZ. I am pleased to yield to my good friend and my candidate.

Mr. DOLE. Mr. President, I share the view expressed by my friend and colleague and chairman of the Finance Committee, Senator LONG.

There was some discussion this afternoon at the 2 p.m. meeting with reference to the amendment. I do not think anyone quarreled about perhaps the merit, but we did wonder about the cost. No one could give us a cost estimate. We understand it is a very broad amendment. It even was suggested that it might cost more than the cleanup bill.

That may not have been an accurate comment, but it was one that was made. But I certainly share the view expressed by Senator LONG.

I have also discussed this with the distinguished Senator from New Jersey, Senator BRADLEY, who has a direct interest in this amendment, and he has indicated support for the amendment and, as I understand, is a cosponsor.

So I just say to the distinguished Senator from Pennsylvania in the event I should become the chairman of the Senate Finance Committee——

Mr. HEINZ. We are counting on that.

Mr. DOLE. We could schedule this very early on.

In the event we have a new Secretary of the Treasury—and I assume we will have one announced very soon—I share the views expressed by my colleague, Senator LONG, that his matter could be given a fresh look.

I did indicate to the Senator from Pennsylvania, I think the record should show, that certainly I have no objection to the substance of the amendment at this time. I want to take a look at the amendment, and I hope I do look carefully at it.

You correctly stated the matter of just not getting around to see enough of the Senators because of the lateness of the session, and there were some questions raised today, and, on that basis, and on the basis that it might imperil passage of this bill, I want to commend the Senator from Pennsylvania for what I hope will be his agreement to withdraw the amendment.

Mr. HEINZ. I yield to my friend from New Jersey.

Mr. BRADLEY. As a cosponsor of the amendment I think this is an important amendment, and I will work very closely with the Senator, if he desires, in the next Congress to attempt to see that this is passed. If someone is going to clean up toxic wastes we should give them the alternative of doing that through the unique financing that is available through IDB. So I certainly will be working with the Senator in the next Congress to get his amendment passed at the earliest possible date.

Mr. HEINZ. I thank the Senator from New Jersey.

I must say, hearing everybody proclaim the virtues of this amendment, tempts me to move for the immediate adoption of the bill, but I shall refrain from being led astray by that temptation.

I have one question for the Senator from Louisiana. I gather it is fair to say, and I hope he will correct me if I am wrong, that if the amendment were to remain in the bill he would strenuously object

to it and take measures to prevent the passage of the bill; is that right?

Mr. LONG. I would feel it my duty to oppose this amendment and to do my best to see that it was eliminated from the bill, and even to urge that the House should resist it on the theory that it ought to be considered in the regular legislative fashion, and that the committee should have the opportunity to study it and to report it rather than it being offered on the floor at this late stage in the session.

Mr. HEINZ. Well, Mr. President, it is not my wish to prevent the passage of superfund. I would like a good bill. I think, frankly, my amendment would improve it, but I understand the concerns of my colleagues on the Finance Committee.

I have one last question I would like to address to the person whom I take to have enough votes to be elected the incoming chairman of the Finance Committee, and that is whether I might have, in his judgment, his support in scheduling the necessary hearings. I hope it will not take very long. The Treasury has already let their position be known. Other people have testified on this.

Second, whether he and I might jointly consult on whether this should be a separate bill which, assuming we have the same kind of support we appear to nearly have here today, and it should move through very quickly or as part of another package, that I might have his interest and concern as well as that of the Senator from Louisiana in trying to expedite what the judgment of the committee then becomes next year.

Mr. DOLE. Well, if I could respond very briefly, certainly I want to cooperate with the Senator from Pennsylvania, and as soon as I learn how to call a hearing [laughter]—you have to have that course on how to act as the majority, which should not take too long—as soon as I understand how to do those things, I will act at the pleasure of the Senator from Pennsylvania or I will ask the ranking Democrat, Senator LONG, for advice on how to call a hearing on this proposal, and whatever route we take, I think it will probably be either separate legislation or, perhaps, as a part of a more general provision. I would not want to wait until the tax bill is reported. That may be some time next July, so I will cooperate fully with the Senator.

Mr. HEINZ. I thank both Senator DOLE and Senator LONG for their very supportive comments on this.

Mr. President, I ask unanimous consent that section 242, as it appears starting at line 20, page 100, and through line 15 on page 104 be removed, be stricken from the amendment. [Vol. 1, pp. 663–667.]

The PRESIDING OFFICER (Mr. LEVIN.) Is there objection?

The Chair hears none, and it is so ordered. The amendment is so modified.

AMENDMENT NO 2631 (AS FURTHER MODIFIED)

Mr. STAFFORD. Mr. President, I ask unanimous consent——

Mr. RANDOLPH. Mr. President, let us have order, please. This is an important announcement.

The PRESIDING OFFICER. The Senate will be in order.

Mr. STAFFORD. Mr. President, I ask unanimous consent that I be permitted to modify amendment No. 2631 offered by myself, Senator RANDOLPH, and 24 other cosponsors.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator will send the modifications to the desk.

Mr. STAFFORD. I sent the modifications to the desk.

In order to explain the action I have taken, let me briefly summarize what the modifications are. Some are purely technical amendments. Some are minor amendments that were agreed to Friday afternoon between the hours of 3 and 7 but by inadvertence not included in the printed bill which was printed very hastily and that describes most of the amendments that are in the modified bill.

Specifically, I will enunciate the amendments. One will exempt farmers from pesticide notice requirements on page 20 **[Sec. 103(e)]**.

One touches on the liability of vessels limited to those "otherwise subject to the jurisdiction of the United States," on page 39 **[Sec. 107(a)]**.

Another covers "contractual relationship" language of third-party defense does not apply to rail carriers on page 40 **[Sec. 107(b)]**.

Liability limits for carriers can be reduced to $5 million for substances not covered by section 311 of the Clean Water Act, page 41 **[Sec. 107(c)]**.

Another clarifies the language for breaching liability limits for carriers to deal with releases where the primary cause was a violation of Federal standards on page 42 **[Sec. 107(c)]**.

Another provides that 85 percent of the fund annually be available for response rather than two-thirds as appears on page 62 and page 91 of the modified amendment **[Secs. 111(e) and 221(c)]**.

Another corrects the figures on page 83 for mercury, nickel, and phosphorous, purely a technical amendment **[Sec. 211]**.

Another removes "substances derived from coal" from taxable chemicals on page 84 **[Sec. 211]**.

Another consolidates study provisions in **section 301**, pages 98 to 100, and page 106.

Another adds changes to 49 USC to increase the penalty for illegal hauling of hazardous wastes **[Sec. 306(c)]**; and finally one changes the period of time for extending fertilizer fee exemption from 3 to 5 years on page 85 **[Sec. 211]**.

Mr. President, that is a summary of the amendments mostly agreed to Friday afternoon, and they are purely technical amendments to the bill.

Mr. President, I yield the floor.

Mr. RANDOLPH. I move the question on the amendments.

The PRESIDING OFFICER. The question is on agreeing on the amendment, No. 2631, as further modified.

Mr. BAKER. Mr. President, a parliamentary inquiry. The question to be put by the Chair is that on the modifications just submitted or on the substitute as previously offered?

The PRESIDING OFFICER. On the substitute, as modified.

Mr. BAKER. Mr. President, I ask for the yeas and nays on the substitute, as modified.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON (when his name was called). Mr. President, on this vote, I have a pair with the distinguished Senator from Michigan (Mr. RIEGLE). If he were present and voting, he would vote "aye," If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HART), the Senator from Rhode Island (Mr. PELL), and the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Michigan (Mr. RIEGLE) are necessarily absent.

I furhter announce that, if present and voting, the Senator from Nevada (Mr. CANNON) and the Senator from Rhode Island (Mr. PELL) would vote "yea."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

Mr. MOYNIHAN. Mr. President, may we have order in the Chamber?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MOYNIHAN. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senator is correct. The Senate is not in order. The Senate will be in order.

The legislative clerk resumed and concluded the call of the roll.

The PRESIDING OFFICER. Is there any other Senator who wishes to vote?

The result was announced—yeas 78, nays 9, as follows:

[Rollcall Vote No. 484 Leg.]

YEAS—78

Armstrong	Cranston	Huddleston
Baker	Culver	Humphrey
Baucus	Danforth	Inouye
Biden	DeConcini	Jackson
Boren	Dole	Javits
Boschwitz	Domenici	Jepsen
Bradley	Durenberger	Johnston
Bumpers	Durkin	Kassebaum
Burdick	Eagleton	Kennedy
Byrd, Harry F., Jr.	Ford	Leahy
Byrd, Robert C.	Glenn	Levin
Chafee	Goldwater	Long
Chiles	Gravel	Lugar
Church	Hatch	Magnuson
Cochran	Hatfield	Matsunaga
Cohen	Hayakawa	McClure
	Heinz	McGovern

Melcher	Sasser	Thurmond
Metzenbaum	Schmitt	Tower
Mitchell	Schweiker	Tsongas
Moynihan	Simpson	Wallop
Nunn	Stafford	Warner
Pressler	Stennis	Weicker
Pryor	Stevenson	Williams
Randolph	Stewart	Young
Roth	Stone	
Sarbanes	Talmadge	

NAYS—9

Bellmon	Helms	Proxmire
Exon	Hollings	Stevens
Heflin	Morgan	Zorinsky

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Nelson, against.

NOT VOTING—12

Bayh	Hart	Pell
Bentsen	Laxalt	Percy
Cannon	Mathias	Ribicoff
Garn	Packwood	Reigle

So the amendment (No. 2631), as modified, was agreed to as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

[See Public Law 96-510, p. 3 of this volume, for text of amendment No. 2631, as passed.]

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

● Mr. WILLIAMS. Mr. President, after over 3 years, the full Senate has finally been given the opportunity to act on legislation to address the serious problems presented by the inadequate and inappropriate disposal of toxic chemical wastes. This may well be one of the most important and far-reaching pieces of environmental legislation of this decade. During the 1970's, a number of landmark laws were enacted which responded to the needs of our environment. It was the intent of Congress to improve the overall quality of the Nation's environment and to protect the health of our citizens. Today we have the opportunity to pass a bill which focuses on one major environmental danger which has long been neglected. Passage of this measure will establish a Federal mechanism, funded largely through fees on the chemical industry, to respond to the hazards of chemical waste.

The measure being considered today is a compromise worked out over many long days of negotiations. The bill, while certainly not as comprehensive as I had hoped for, is an important, positive step which will insure much needed funding for the cleanup and management of chemical wastes. I believe my good friends the chairman and ranking minority member of the Senate Environment Committee (Senators RANDOLPH and STAFFORD) and all those who have been involved in the negotiations on this measure deserve our

highest praise for their hard work and determination in fashioning an acceptable piece of legislation.

However, I have several very strong reservations over the proposed compromise. The bill does not meet many of my original hopes and expectations in several aspects and, were it not for the seriousness of the problem and the need to enact legislation this year to provide funding for mitigating the threat of chemical pollution, I would consider attempts to rectify what I believe are deficiencies with the present bill. While I do not believe that this would be an appropriate action at this time, I would like to outline my concerns in the hope that the Senate will consider these matters next year.

My most serious concern with the proposed legislation is the absence of a provision for the compensation of victims of chemical wastes for their out-of-pocket medical expenses. S. 1480, as originally reported by the Senate Environment Committee, would have allowed the fund to compensate those who were exposed to releases of toxic chemicals and suffered resulting health problems. The compromise that was proposed only last week provided for such payments but placed a limit on the amount an individual could receive of up to $30,000. This, I believe, was a substantial compromise on the part of the supporters of this legislation. Today's version, however, will not allow expenditures by the fund for out-of-pocket medical expenses. This is a very serious omission, and a harsh inequity for those who have already suffered from the effects of chemical wastes, as well as those who may suffer such fate in the future. These are the very individuals who have brought this serious problem to the attention of the Nation, the families of Love Canal, of Jackson Township, N.J., and of the many other areas contaminated by hazardous waste.

The assistance they have sought for so long is being denied them, though their problems are so well known to all of us. Mr. President, each day we hear of another incident of contamination, another dumpsite, another water supply poisoned and rendered unusable. What are we going to say to the people affected by these incidents when they come to us for help because the polluter is unknown or unable to pay compensation. Therefore, Mr. President, while I intend to vote for the bill as amended, I certainly do not intend to turn my back on these individuals and will work for the enactment of a compensation provision next year.

Furthermore, I do not feel it is necessary nor wise to preempt existing State programs as the compromise would do [Sec. 114(c)]. These State programs have proved invaluable in many cases in allowing the State to respond to the dangers of chemical waste. My State of New Jersey has such a program, without which the cleanup of the Chemical Control site could not have begun. I am hopeful that an agreement can be achieved which will allow States a measure of flexibility so that their programs can play an important complimentary role with the Federal program in responding to hazardous waste problems.

The American people have waited too long for the Congress to act on this serious problem and, therefore I do not believe it would be in the public's interest to attempt to correct what I perceive to be problems with the proposed compromise. We can delay no

longer, it is imperative that legislation be passed and a Federal response program established. Where the bill falls short we can improve upon it next year. Its important provisions should not be overlooked in our worries over its omissions. Money will be available for the cleanup of abandoned sites and incidences of releases whether they are in the water, on land, or in the air. The legislation will provide for the restoration of natural resources which have been damaged, and health studies will be carried out by the new "Agency for Toxic Substances and Disease Registry."

Mr. President, we must take this first step before we can take whatever actions are necessary to insure that all the concerns of our citizens are cared for.●

Mr. LEAHY. Mr. President, today, the Senate will take an important step toward addressing one of the Nation's most troubling environmental pollution problems. With the passage of the Comprehensive Environmental Response, Compensation and Liability Act, the superfund bill, the Federal Government's ability to respond to incidents involving hazardous and highly toxic substances will be greatly strengthened.

I support this compromise legislation, as strongly as I supported the original S. 1480, and I urge my colleagues to join me in approving the Stafford-Randolph substitute.

This country is only beginning to realize the long-term dangers inherent in the manufacture and use of hazardous and toxic substances. The tragedy at Love Canal points to many outstanding problems of compensating the victims of poisoning by hazardous substances, of assessing who is to blame for the damage, and of the proper role of the Government in responding to these emergencies. The problems of cleaning up hazardous waste spills, assessing liability for any physical, environmental, or economic damage, and funding any emergency response mitigation or treatment actions are of a magnitude and complexity to require legislation of this scope and structure.

Too many times this year, we have read reports of environmental and human catastrophes—at Love Canal, at Elizabeth, N.J., at the "Valley of the Drums" in West Point, Ky., and numerous other sites around the country where highly toxic, hazardous substances have escaped into the environment, contaminating the air and water supplies and creating still-unknown health dangers. There are hundreds, maybe even thousands, of orphan dumps, the long-abandoned waste disposal sites or manufacturing plants, scattered across the country. Many other sites are still active, regulated waste repositories, and we may never know the full extent, or location, of illegal dumping of these dangerous wastes and materials.

The costs of locating these orphan sites or of containing the active sites, of cleaning up the polluted areas and of mitigating any danger to the public health and safety are astronomical. The superfund bill which is before the Senate today will provide the necessary funds and authority to locate these sites and to begin to take the proper remedial actions.

This superfund legislation is the much heralded compromise, fashioned from the two bills passed by the House this fall and S. 1480, and engineered by my distinguished senior colleague (Mr. STAFFORD), with Senator BAKER, Senator RANDOLPH, and others. I

take this opportunity to congratulate my colleagues for their perseverance and desire to insure passage this session of this vital legislation.

Mr. President, many of my colleagues today have recounted the stories of residents of Love Canal and the nightmare their lives have become. Earlier this year there were reports of illegal, midnight waste dumping on New England's back roads and in its forests and many Vermonters expressed their outrage and grave concern for the consequences, for the potential danger to their health, their livelihood and their environment. Environmental poisoning does not discriminate between victims, between drinking water supplies or already stagnant waters, between inhabited or rural areas.

I have heard many complaints that the scope of S. 1480 as reported was too broad, that the liability provisions [Sec. 107] captured not only the very large chemical manufacturers and users, such as Dow Chemical, but hundreds of small companies as well, and that these provisions would create an excessive burden on small business. However, the victims of toxic poisoning incidents include, ironically, very large numbers of small businesses.

For example, in 1976, the Agriculture, Nutrition, and Forestry Committee conducted several hearings on the dumping of Kepone on the James River, Va. At that time, there were 11 small marinas in operation on a tributary of the James River. Today only one of these is still in operation and it is on the verge of bankruptcy. Countless numbers of commerical fishing ventures have been forced out of business, and, although the State of Virginia has just recently approved commerical fishing in the James River, the area's service industries, bait shops, restaurants, and other small businesses have all but disappeared. Similarly, the PBB disaster in Michigan destroyed numbers of small-to-medium dairy farms and, had that incident happened in my State of Vermont, its economy—its agriculture and travel industries—could very well have been crippled.

Mr. President, the country cannot afford any further delay in addressing the problems of hazardous waste disposal and in taking action to control environmental contamination. It is essential that we have available an adequate plan and resources to respond to oil or chemical spill emergencies, to clean up the area, to determine liability and assist the innocent victims of inadequate or illegal waste disposal. The passage of the compromise bill will provide the means and incentive to control the handling and disposal of hazardous substances and thus protect the public from further potentially irreparable harm.

Mr. CHAFEE. Mr. President, today, we are considering legislation to deal with what is fast becoming the most serious environmental problem of our time, hazardous waste sites and hazardous spills.

Some say we are rushing headlong into this issue without thinking, that we need more time in order to be rational about the problem. I challenge those who feel that way to come to my State of Rhode Island. I challenge them to meet with my constituents who fear that their drinking water is poisoned, their health endangered, and their resources contaminated. Will these citizens and millions

of others like them find it reasonable to wait another few years for help? I doubt it, and I do not blame them.

We on the Environment and Public Works Committee have spent 3 years examining hazardous waste and spill legislation. Our present capability to clean up sites and spills and recover from the wrongdoer is dismal. The superfund bill sets a policy of dealing with these hazardous substances that are buried or otherwise present in our land and water. If we fail to act, the number of abandoned waste sites and the effects of spills will increase a hundredfold. The time has come to create the capability to clean up and monitor the dangerous waste sites and spills that beset our communities and people. Our Federal and State Governments must have a tool for holding liable those who are responsible for these costs.

During the last several months, I have visited several dangerous waste sites in my State of Rhode Island. I have seen the fear of the people who live nearby and the town officials who must try to deal with the problems with whatever resources they can bring to bear. In some cases, we have been able to provide at least some help—such as research moneys for cleanup at the Picillo site in Coventry and EPA assistance in monitoring and pumping out sections of the western sand and gravel site in Burrillville. EPA has also made a commitment to me to assist the town of North Smithfield with the landfill resources recovery site.

Now we must act on legislation to put in place a national program to deal with waste sites and spills. I join my colleagues today in cosponsoring the legislation which is pending before us. As an original cosponsor of S. 1480 and a member of the two Environment and Public Works Subcommittees which worked on superfund, I am pleased to see that the efforts of many concerned Members and others during the last few weeks have resulted in a version of the legislation coming to the floor that means victory for all those who have fought for hazardous waste legislation for so long.

This bill will establish a $1.6 billion fund for cleaning up abandoned waste sites and hazardous spills **[Secs. 221 and 303]**. The provision which I had earlier introduced in S. 1480 for the restoration of damaged natural resources remains in the legislation we are considering today **[Sec. 107(a)]**. One of the most important items, especially in the view of my State, is that wrongdoers will be liable under this law for the costs incurred in cleanup and response, as well as the natural resource damages. Furthermore, this legislation does not interfere with the ability to go into State court and recover for additional damages not covered under this Federal scheme **[Sec. 107(8)]**.

There are two issues which may pale in the light of the tremendous overall problem, but which are still very important, indeed **[Sec. 111(c)]**. Unless we can learn what troubles are brewing at a location, how will we know how or if to respond? This has happened time and again in my State and it has been a continuous struggle to come up with funds to pay for such studies. I consider such capability in the fund to be absolutely necessary.

Another item for which we authorize use of the fund is the cost of epidemiologic studies, victim registries, and certain diagnostic

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services for persons possibly suffering from long-latency diseases caused by hazardous releases. This information could be extremely helpful to possible victims and hopefully will defray some of the costs of recovery of damages.

Another section which is in the bill at my request is a study of the fee structure's impact on our balance of trade [Sec. 301(a)]. When the Treasury Department appeared before the Finance Committee on the superfund legislation, I asked the Department whether the tax would only be levied on imports, to the extent of the simple substance or feedstock. This is indeed the case, meaning that the tax will not be levied on imported intermediate products and imported final products derived from the designated feedstocks. Such a tax structure may impair the competitive position of certain of our domestic companies. Thus we have included in this legislation a study, to be conducted in cooperation with the Department of Commerce and the Special Trade Representative, of how the tax structure affects our country's balance of trade.

Mr. President, it is with great joy that I urge my colleagues to approve this superfund legislation. We have a duty to the people of this Nation to deal with the most serious environmental problem they and we may ever have to face.

Mr. HELMS. Mr. President, I want to be frank about my assessment of this superfund legislation. I wish the Senate had taken the time to consider fully not only S. 1480, but also the substitute that is before us, because I think many of my colleagues have concerns about the scope and the approach of the bill.

First, we are going far beyond what is needed to address the real problem—that of abandoned waste sites. I am concerned that the addition of this whole "release" concept will unnecessarily open the "Pandora's box" of new regulations and notice requirements—requirements which will not assist in the cost-effective cleanup of waste sites but that will in addition merely provide jobs for more bureaucrats at the expense of the consumers of America.

In addition, I have long supported State participation in any superfund bill dealing with hazardous waste sites. This is both a Federal and a State problem. States have benefited from an industrial location within their borders in salaries to employees, and in State taxes paid by the corporations. Therefore, the burden is not that of the Federal Government to solve problems that could and should have been solved by local and State governments.

In that regard, I note that the compromise bill has eliminated any State "superfund" by preempting any participation by the chemical industry [Sec. 114(c)]. I understand that a two-part system could be unwieldy, but if we are preempting participation, why not preempt Federal participation—for a change?

Now, as to this compromise bill before us. We have come a long way from the original S. 1480. It is interesting to look back to July 11, 1979, when Senator STAFFORD remarked on the floor of the Senate:

> The bill which we are introducing is not so much a solution as a suggestion. We expect many of its provisions to be subjected to considerable and sometimes heated debate. Ultimately some of them—perhaps many—will be changed during subcommittee, committee, and Senate review. That is exactly what we intend.

As he predicted, S. 1480 was the subject of intense controversy and was modified between the time it was introduced and when it was reported; but more than that, in the compromise bill being considered today. Great progress was made last week from the earlier printed version of the compromise. To provide a record of this progress, I submit for the RECORD at the conclusion of my remarks a list of changes as presented by the Environment and Public Works Committee.

[The text of amendment No. 2622 is printed in the CONGRESSIONAL RECORD of November 18 at page S14714. See page 203 of vol. 3.]

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. HELMS. In all of this, Mr. President, there are significant improvements to which I will address myself.

First, the committee has deleted the term of joint and several liability [Sec. 107]. As originally introduced on July 11, 1979, S. 1480 imposed an unprecedented scheme of strict, joint, and several liability on owners, operators, and all others who caused or contributed or who are causing or contributing to a prohibited discharge, release, or disposal of a hazardous substance. Not only were such persons jointly and severally liable for Government cleanup and removal costs, but also for an extremely wide array of third-party damages.

As reported by the Committee on Environment and Public Works in July 1980, S. 1480 included a number of amendments apparently designed to mitigate some of the worst aspects of the bill as introduced. However, the joint and several liability language was retained in section 4.

Retention of joint and several liability in S. 1480 received intense and well-deserved criticism from a number of sources, since it could impose financial responsibility for massive costs and damages awards on persons who contributed only minimally (if at all) to a release or injury. Joint and several liability for costs and damages was especially pernicious in S. 1480, not only because of the exceedingly broad categories of persons subject to liability and the wide array of damages available, but also because it was coupled with an industry-based fund. Those contributing to the fund will frequently be paying for conditions they had no responsibility in creating or even contributing to. To adopt a joint and several liability scheme on top of this would have been grossly unfair.

The drafters of the Stafford-Randolph substitute have recognized this unfairness, and the lack of wisdom in eliminating any meaningful link between culpable conduct and financial responsibility. Consequently, all references to joint and several liability in the bill have been deleted. The bill now provides that the listed classes of defendants will be liable for government removal and remedial costs and associated damages to natural resources, in accordance with the standard of liability specified in section 311 of the Federal Water Pollution Control Act [Sec. 101(32)]. That section on its face does not impose joint and several liability, and the courts applying section 311 have not attempted to ignore the language of the statute.

It is very clear from the language of the Stafford-Randolph substitute itself, from the legislative history, and from the liability provisions of section 311 of the Federal Water Pollution Control Act, that now the Stafford-Randolph bill does not in and of itself create joint and several liability. The Government can sue a defendant under the bill only for those costs and damages that it can prove were caused by the defendant's conduct.

In addition, we have made great progress in terms of the size of this fund [Secs. 221(b) and 303]. As originally proposed the fund could have exceeded $4.1 billion. I am happy that my colleagues have agreed to adopt an amendment limiting the size of the fund to a total of $1.6 billion. Even at that level it will, over the next 5 years, cost each citizen of the United States $7 to support this fund. Now, I know the argument that the chemical feedstocks will be taxed to provide for about 88 percent of the fund; however, ultimately the American public will pay in higher prices for the goods produced from these chemicals.

Now, as to the funding mechanism, I am disturbed at the "both ends" approach of the tax. First, it taxes feedstocks of most chemicals without regard in any way to the amount or toxicity of the hazardous waste produced by industry, as a result of the use of the chemical feedstock [Sec. 211]. Then, there is an additional tax on the hazardous waste deposited at the waste site [Sec. 231]. We ought to use the latter approach exclusively rather than penalizing companies which produce no waste, or who attempt to minimize the production of waste.

The bottom line is this: We have gone a long way toward making a bad bill better. Still, for the reasons I have expressed, we need to sit down and thoroughly consider what we are doing with the passage of this bill. There are still some "bugs" in this thing which could be ironed out with further work; therefore, I must oppose the bill's passage.

EXHIBIT 1

CONCESSIONS IN STAFFORD-RANDOLPH COMPROMISE

Eliminated the federal cause of action, including medical causation and statute of limitations
Eliminated joint and several liability [Sec. 107]
Limited the scope of liability
Added a third party defense
Reduced size of the Fund from $4.1 billion for six years to $2.7 billion for five years [Secs. 221(b) and 303]
Set the industry share at 88 percent—half-way between the 100 percent share of H.R. 85 and 75 percent share of H.R. 7020
Adds a legislative veto of regulations, a provision in none of the bills [Sec. 305]

● Mr. DURENBERGER. Mr. President, it is reassuring to me that some of the most important pieces of legislation cause the greatest amount of agony for this body. It is the agony that gives birth to fair and thoughtful compromise.

Such is the case with the so-called superfund legislation. I want to congratulate my distinguished colleagues Senators STAFFORD and RANDOLPH for their persistence and determination. I hope their hard work, and the efforts of everyone who worked on this compromise, will be rewarded with passage of this important bill.

I am honored to be a cosponsor of the superfund bill being offered by Senators STAFFORD and RANDOLPH. While the bill is not everything that I and others may have hoped for, it is more than just a stopgap piece of legislation. This compromise is a significant first step toward building a framework that will allow us to complete the work on this issue in the 97th Congress. I am convinced that our success next year rides on the passage of this compromise.

This legislation will allow us to immediately tackle some of the most pressing problems of toxic releases. Certainly, even with this legislation, we have much work to do on toxic waste disposal, especially regarding the issues of siting such facilities. However, we have the opportunity to lay the necessary foundation by passing this bill. If we fail, we run the risk of being set back a year or more. It is vitally important that we refuse to take that risk.

The Stafford-Randolph bill is a sound compromise, and I urge my colleagues to serve both the immediate and the future public interest by passing this legislation.●

● Mr. JEPSEN. Mr. President, I intend to vote for the legislation before us today because we need to get about the business of cleaning chemical waste problem areas. Such cleanup activity is a part of the process and planning necessary to prevent the "poisoning of America."

The compromise before us today, I have been told, will provide the mechanism and direction to clean up these hazardous waste sites. I hope this is true. I sometimes wonder about the overzealousness of the Environmental Protection Agency, the Government body which will primarily be responsible for the administration of this act. Generally, I do not favor legislation which expands the long arm of the Federal Government, as this bill will do. We would all do well to remember the three statements which are always suspect, "Let me just say a few brief words, the check is in the mail," and "I'm from the Government and here to help you."

The unfortunate truth is, however, that something needs to be done about inactive or abandoned hazardous waste sites now. Where health threats are imminent, quick corrective action is necesary. While this legislation is not the only way to provide that activity it may be the best option there is at the moment.

I generally believe that State and municipal governments are in the best position to determine the public health hazards associated with chemical wastes and what action or environmental tradeoffs should be made. However, it is my understanding that the National Governors Association and the National Association of State Legislators support this compromise—an additional reason for supporting this proposal.

Chemicals are here to stay. We all use them and in this day and age we could not get by without them. This being the case, we must accept the proposition that cleanup and control of chemical wastes is in the public interest and therefore the Federal Government should implement directions that will provide satisfactory solutions to the safety hazards of chemical waste.

I want to vote for legislation to clean up hazardous chemical waste sites now. I will be monitoring the administration of this bill to see that it performs now—not hundreds of regulations and court suits later.●

● Mr. DOMENICI. Mr. President, I am pleased to be a cosponsor of the compromise superfund bill now before this body. I know the hard work and the amount of time that the entire Environment and Public Works Committee has put into producing a superfund bill in this Congress, and I was pleased to play a part in the formulation of such a compromise.

This legislation is an important step forward in responding to the serious problem of leaking hazardous waste sites and spills of hazardous substances.

The bill provides the Environmental Protection Agency with the authority to respond quickly to spills and leaking sites that are causing harm to individuals and to the environment, and to contain and clean up the spills [Sec. 104]. By being able to respond quickly, EPA will stop many of the accompanying problems of long-term exposure to these substances.

The bill sets up a $1.6 billion fund over 5 years, financed primarily by industry fees, to provide the financing necessary to allow EPA to respond in a timely manner [Secs. 211 and 221].

Clearly, Mr. President, the problem of hazardous substances must be addressed, and this body is acting in a responsible manner by passing legislation in this Congress. I was pleased to be able to be a part of this effort.●

● Mr. LEVIN. Mr. President, the superfund legislation pending before us today is landmark legislation in environmental protection, for my own State of Michigan, as well as for the Nation as a whole. I am a cosponsor of this measure because I support the enactment of comprehensive legislation that will provide a vehicle for the Government to respond to releases of hazardous substances and to clean up abandoned hazardous waste sites.

Earlier this year, I submitted recommendations to the distinguished chairman from West Virginia (Mr. RANDOLPH) regarding needed changes in S. 1480. My primary interest was in ensuring that in enacting the measure, the Government was recognizing the importance of each State's role in implementing the bill.

I am happy to see that this substitute bill contains many of those recommendations, including consultation with State and local agencies in the development of the national contingency plan [Sec. 105], reimbursement to States for expenses incurred in cleaning up hazardous waste sites prior to the enactment of the bill [Sec. 104(c)(3)] and consultation with States in the determination of response strategies in environmental emergencies [Sec. 104(c)(2)].

I am also happy to see that the committee has included in the bill, upon my recommendation, a provision that will provide for the establishment of an Office of Assistant Administrator for Solid Waste at the Environmental Protection Agency (EPA) [Sec. 307]. This provision should prevent delays in the implementation of the statute such as those that occurred during the drafting of regulations to implement the Resource Conservation and Recovery Act of 1976. Most importantly, it will place the land protection programs of EPA on an equal footing with the air and water protection programs, so the agency will have strongly expressed demands for allocation of limited resources from all three divisions.

While I am distressed to note that the compromise does not provide for compensation to people who are the victims of releases of

hazardous substances, I am convinced that this body should enact a superfund measure during this Congress. It starts us down a road which we must travel as a people. I urge all of my colleagues to support this legislation as another step toward the achievement of a safer, cleaner environment.●

● Mr. RANDOLPH. Mr. President, I thank my colleague from Michigan (Mr. LEVIN) for all of his suggestions and recommendations that have served to strengthen the statute and make it more equitable.

In addition to **section 307** of the bill, which will establish an Office of Assistant Administrator for Solid Waste at EPA, Senator LEVIN has offered thoughtful recommendations to the bill that will provide for reimbursement to States for cleanup costs incurred prior to passage of the bill [**Sec. 104(c)(3)**] and consultation with States and local agencies for the development of the national contingency plan [**Sec. 105**] and for response strategies to sudden releases of hazardous substances [**Sec. 104(c)(2)**]. I heartily accepted these recommendations.

Regarding the first recommendation, incorporated into the bill as **section 307**, I agree that the need to eliminate structural administrative conflicts in the EPA, so as to hasten the implementation of this sorely needed superfund legislation, is of primary importance in consideration of this bill. I am happy to see that Senator LEVIN's Governmental Affairs' Oversight Subcommittee has translated poor administration in the implementation of the Solid Waste Disposal Act by EPA into a positive improvement toward the implementation of superfund.

Again, I thank the Senator for all of this assistance in the long process toward enactment of this bill.●

● Mr. CANNON. Mr. President, **section 104(e)(1)** relates to information gathering for purposes of assisting in determining the need for response to a release. It is my understanding that this section is not intended to overlap or duplicate the information-gathering authority of the Department of Transportation under existing laws such as the Hazardous Materials Transportation Act, Ports and Waterways Safety or the Rail Safety Act. Is that correct?

Mr. RANDOLPH. Yes, Senator. That is correct. No duplicate information gathering authority is intended under this section.

Mr. CANNON. **Section 103(a)(1)** requires immediate notification to the National Response Center which was established under the Clean Water Act and has been administered by the U.S. Coast Guard. It is my understanding that the National Response Center will continue to be administered in the same fashion.

Also, this section requires that the notification be made by "any person in charge." It is my understanding that the term means any responsible person and will be construed in accordance with the designations presently made under the national contingency plan. Is my understanding of this section correct?

Mr. RANDOLPH. Yes, it is.

Mr. CANNON. **Section 101(24)** defines the term "remedy" to include those actions taken in the event of a threatened release to prevent such release. It is my understanding that this definition is not intended to overlap or duplicate the regulatory authority of the Department of Transportation under existing laws. Is that correct?

Mr. RANDOLPH. Yes, Senator, that is correct. No duplicate regulatory authority is intended by this definition.

Mr. CANNON. S. 1480 as originally reported included three separate exclusions relating to fertilizer and pesticides. One was an exclusion from the definition of "release" for the normal "field" application of fertilizer [Sec. 101(22)]. In addition, the "field" application of pesticides is exempted from the application of certain notification requirements [Sec. 103(e)] and liability provisions [Sec. 107(i)]. S. 1480 as amended would remove the term "field." It is my understanding that these changes in no way are to alter the original intent of these exclusions, reflected in the legislative history accompanying S. 1480 as originally reported. Instead these changes are intended only to insure that these exclusions indeed apply to all customary uses of fertilizer and pesticides rather than just to such applications to fields.

Mr. RANDOLPH. Yes, that is correct.

Mr. CANNON. Section 107(e)(1) prohibits transfer of liability from the owner or operator of a facility to other persons through indemnification, hold harmless, or similar agreements or conveyances. Language is also included indicating that this prohibition on the transfer of liability does not act as a bar to such agreements, in particular to insurance agreements.

The net effect is to make the parties to such an agreement, which would not have been liable under this section, also liable to the degree specified in the agreement. It is my understanding that this section is designed to eliminate situations where the owner or operator of a facility uses its economic power to force the transfer of its liability to other persons, as a cost of doing business, thus escaping its liability under the act all together.

Mr. RANDOLPH. That is correct.●

● Mr. WEICKER. Mr. President, today I am happy to support and cosponsor the Stafford-Randolph substitute to S. 1480, the Environmental Emergency Response Act.

The so-called superfund bill is designed to help eliminate and prevent a most distressing blight on our land; the unrestricted dumping of toxic wastes into our waters and land.

Discharges of toxic wastes has already created serious health problems to our citizens; the Love Canal disaster and the Elizabeth, N.J., explosion being the most notable incidents.

Since Love Canal many additional and potential changes have come into focus. EPA estimates that hazardous dump sites nationwide range between 32,000 and 50,000, and those that are considered significant are between 1,200 and 2,000, but who knows how many more will be found. Indeed, EPA estimates that only 10 percent of a total 11 billion pounds of toxic wastes generated annually is disposed of in a safe and sound manner. The cost of toxic wastes cleanup can be enormous. The Love Canal estimate is roughly $20 to $25 million.

In my own State of Connecticut the problem is as acute as in other industrial States. In Wilton, Conn., as an example, a high incidence of cancer is thought to be a result of a 75-acre landfill. Less than 25 families lived in a four street area when the landfill was built in 1967. Nine people from these families have contracted

cancer within the last 7 years and two others since 1970; a total of seven of these people have died.

Although there is no hard evidence that there is a link between the high incidence of cancer and the Wilton dump site, the facts are worthy of more than just concern.

There are much stricter laws dealing with hazardous wastes now than before the seventies including the Clean Water, Clean Air, Solid Waste Disposal and Toxic Substances Control Acts, however, present laws are still inadequate. These regulations do not address situations where the owner is unable to pay the cleanup costs or if the disposer of the wastes is unknown.

The problem of hazardous wastes and the health and environmental dangers they pose should be of concern to every Member of this Congress. Hazardous wastes are a problem everywhere, in every State and most municipalities.

I would like to see the strongest possible bill pass this Congress, but the high controversy surrounding S. 1480 will kill its chances in this late lameduck session. I, therefore, applaud my two colleagues, Senators STAFFORD and RANDOLPH for working so hard and diligently to come up with a reasonable compromise between the Senate bill and the House passed versions H.R. 7020 and H.R. 85.

Mr. President, there is no need to continue on about the problems that hazardous wastes pose to this Nation; volumes have already been written. I just want to make my point clear that we cannot let any more time pass before we take the problem of hazardous wastes head on. We must pass the superfund bill now.●

● Mr. MITCHELL. Mr. President, I would like to address an inquiry to my friend from Vermont, Mr. STAFFORD. Is it your understanding that under this substitute to S. 1480, no State or other Federal law is affected by the provisions of this bill [Sec. 114].

Mr. STAFFORD. That is correct.

Mr. MITCHELL. Is it your further understanding that no statute, State or Federal, or common law, providing for a standard of strict liabilities, is diminished by this bill [Secs. 101(32) and 107(j)]

Mr. STAFFORD. That is correct. Under the bill, no obligations or liabilities of any person under other Federal or State law, including common law, are diminished by the provisions of this bill.●

● Mr. KENNEDY. Mr. President, as a cosponsor of the Hazardous Containment Act of 1980, I would like to voice my support for Senate passage of a strong superfund bill in this Congress.

There is no question that the improper disposal of hazardous waste has become one of our Nation's most serious environmental problems. The Environmental Protection Agency estimates that as many as 30,000 dump sites nationwide may pose significant health problems to the public. Millions of Americans are exposed each day to potentially serious health effects as a result of improper disposal of hazardous waste.

In the commonwealth of Massachusetts alone, there are 51 confirmed hazardous waste sites and another 321 sites that will require further investigation. Twenty-five cities and towns in the Commonwealth have been forced to shut down their public water systems due to the presence of toxic chemicals in their water supplies.

The tragedy in human terms was made very clear during a joint hearing before the Subcommittee on Health and Scientific Research and the Committee on the Judiciary which I chaired in June of this year:

Mrs. Anne Anderson from Woburn, Mass., told us of the arsenic and chromium pits that exist in her city, and of her young son's battle with leukemia:

Mr. James McCarthy of Jackson Township, N.J., told us of the contaminated landfill one mile from his home and of the tragic death of his 9-month-old child due to a rare form of kidney cancer;

Mr. Skip Foss talked about the dangerous chemicals in a landfill near his home in Bumper's Cove, Tenn., and how his daughter suffered from respiratory problems caused by the fumes from chemicals at the sites;

And we know only too well the terrifying story of Love Canal where an entire community in New York had to be relocated due to the tragic effects from the proximity of toxic chemicals.

We, as a Nation, can no longer afford to ignore the serious health and environmental impacts of improperly disposed hazardous waste. We must not turn our backs on the human suffering that could endure for generations from exposure to toxic chemicals in our neighborhoods. The chemcials which were buried in 1960 are causing illness in 1980 and will continue to plague us in the decades to come. We must act now.

S. 1480 represents a critical first step in coming to grips with one of the most serious environmental issues of our time. Let us begin today the process that will insure that the future for our children is not clouded by the specter of unnecessary illness and a devastated environment.

In conclusion, Mr. President, the following article from the September 29, 1980, edition of U.S. News & World Report accurately describes the serious toxic waste problems of a city in Massachusetts. I ask that it be printed in the RECORD.

The article follows:

ONE TOWN MIRED IN A TOXIC WASTELAND

WOBURN, MASS.—In this small working-class community 15 miles north of Boston, residents cite a litany of chemical abuses that some fear could make the town the next Love Canal.

Within Woburn's boundaries lies a wide range of deadly chemicals: Radioactive wastes, an arsenic pit, two lagoons of chromium, and residues from a plant where metal drums used for hazardous-waste disposal are cleaned.

These and other wastes, say residents, have combined to produce such side effects as strange-tasting water, foul odors and concentrations of explosive swamp gas.

State health statistics also show that Woburn has the highest cancer rate of any town its size in the state. Says Rick Leighton, the Environmental Protection Agency's chief troubleshooter in Woburn: "What you have here are a bunch of potentially bad factors in close proximity to each other and the drinking-water supply."

Woburn residents point to the eastern edge of town where an 800-acre industrial tract has a 127-year history of intensive chemical use and waste disposal.

Digging up the past. The property changed hands among various chemical companies until 1971, when Consolidated Chemical Industries, which produced glue from animal hide and bone, sold it to a local land developer.

The developer's bulldozers disturbed long-forgotten piles of animal carcases, spurring complaints from residents about a heavy rotten-egg smell. A court order halted work temporarily, but operations have since resumed.

"The smell was horrible. It would wake us up from a sound sleep in the middle of the night," says Judy Broderick, whose home in nearby Reading lies downwind of the land.

Other residents talk about eye-burning fumes, strange skin rashes and a general lethargy in Woburn and Reading, especially among the children.

On one Woburn street, residents claim, there have been three stillbirths and six miscarriages. Ten families there have reported cases of cancer in the last decade.

Officials of the Federal Center for Disease Control are studying 50 cancer deaths in Woburn, focusing on 36 rare kidney and liver-cancer fatalities that have occurred in the last 10 years.

In addition, they are looking into cases of leukemic children in Woburn, especially 10 youngsters—four of whom lived within half a mile of each other—who died of the disease.

Property values have slumped, and bottled-water sales have boomed. Barbara Opacki, a Woburn resident, complains her home has not appreciated in value as much as others in the Boston area. Adds City Engineer Tom Mermin: "I've talked with real estate people who tell me they can't sell homes here."

Times have changed. The big problem in Woburn, says Richard Chalpin, a state environmental official, is that waste-disposal practices considered unacceptable today were once judged to be perfectly safe.

Others insist that disposal areas should never have been disturbed. Dr. C. Reginald Hardcastle says he fought during his 20 years as Woburn health commissioner to prevent building on waste sites. Says Hardcastle: "I told anybody who asked, "I'll let you do one thing there. I'll let you be buried there."

Cleanup costs are estimated at 2 million dollars. But local officials don't know where to get the funds. To fence off an arsenic pit—a $25[illegible] job—the state had to use prison labor and coffee money from the state environmental-control office.●

● Mr. RIEGLE. Mr. President, I am gratified that the Senate has acted on this crucial legislation. As you know, Michigan has encountered severe problems in relation to toxic substances, and the citizens of my State are acutely aware of the dangers inherent in the production and disposal of toxic wastes.

The legislation before the Senate is a genuine compromise. In examining the substitute, I find that most of my concerns have been accommodated, and that we now have a measure that represents a positive step toward insuring a safe environment without being too burdensome or punitive on our necessary and valuable chemical industry.

I have worked with the State of Michigan to incorporate their particular concerns. They have made a tremendous effort to clean up abandoned sites, but their resources are severly strained. The legislation will provide the necessary funds to identify and neutralize the most critical sites in the State.

This bill is a first step. One of the most frustrating aspects of this issue is our lack of knowledge. We simply do not know the size of the problem, nor the total costs of the cleanup efforts. I think that the fund size is appropriate to begin these efforts, and that as we gain experience in this area, we will modify this legislation to fine-tune its approach. I applaud the work of the committee in adjusting some of the original provisions that were especially onerous to small business.

We can now look to the Resource Conservation and Recovery Act as an essential complement to this bill. There will finally be a procedure for the tracking and disposal of all hazardous chemicals. The superfund legislation will address the major threat caused by existing disposal sites, which is foremost in the minds of people.

Mr. President, I think that we have constructed a bill that clearly meets the needs and expectations of the country. I am satisfied with this measure, and hope that the House will act on it before

adjournment. We cannot afford to wait any longer in establishing the necessary framework and funding to meet the hazards posed by toxic wastes.●

Mr. HELMS. Mr. President, under **section 107(c)(2)**, the limits on liability established by **section 107(c)(1)** do not apply if the primary cause of the release of a hazardous substance was a violation, within the privity or knowledge of an owner, operator, or other responsible person, of an applicable Federal safety, construction, or operating standard or regulation. Inasmuch as the whole scheme of **section 107(c)(2)** appears to relate to knowing or willful conduct, I understand that the type of violation mentioned in **section 107(c)(2)** must be knowing or willful, as distinguished from a violation which is merely inadvertent.

Mr. STAFFORD. That is correct. Of course, knowledge is a state of mind, and cannot be proved directly. It must be inferred from facts. And if the facts show that there was knowledge, then the section applies.

Mr. HELMS. It is my understanding that this bill is to be substantially keyed to the national contingency plan to be established under **section 105**. By my reading of the bill, this plan is the principal instrument for governing the expenditure of money from the Fund. My concern is, first, that there be adequate direction in the bill that under the contingency plan cost benefit analysis will be applied to determine whether and when action should be taken to remove hazardous substances or to remedy or otherwise respond to releases. I read **section 105** and, particularly, paragraphs (3), (7), and (8) as requiring those charged with developing the national contingency plan to take cost-benefit considerations into account, not only in determining whether particular measures are cost effective given a decision to take action under the act, but also in determining whether and when action should be taken at all. I also read the response authority section (**section 104(c)(4)**) as charging the President to select remedial actions to carry out this section which are cost effective, and provide a balance between considerations of public welfare on the one hand and the availability of money from the Fund to respond to threats at other sites as well as the particular one under consideration.

I ask the chairman of the Environment and Public Works Committee and the ranking minority member of that committee, for the purposes of legislative history, whether my reading of these provisions is correct.

Mr. STAFFORD. The Senator is correct that considerations of the relationship between the costs and the benefits of a particular response action are an essential part of both the national contingency plan, to be developed under **section 105**, and the selection of remedial and response actions under **section 104.** We intend that priorities be set for expenditures from the fund, and that such expenditures be made in those situations which most present a threat. The fund should not be used to clean up or remedy any and every discharge.

Mr. HELMS. I appreciate the Senator's statement. It is also my understanding, and I wish to clarify this point, that since the national contingency plan will be revised and republished after notice and opportunity for public comment, it is the intention of the

Senate that the plan be subject to the legislative veto provision in section 305. Would the gentleman clarify this point for the purposes of legislative history?

Mr. STAFFORD. Yes, again the Senator is correct. We envision that the national contingency plan would be submitted to the Congress, pursuant to section 305, and would be subject to legislative veto under that section.

Mr. SIMPSON. Mr. President, with the adoption of the compromise offered by Senator STAFFORD and Senator RANDOLPH there are several vital areas which require further elaboration for the record. One issue in particular necessitates additional clarity—liability under section 107. The report of the Senate Committee on Environment and Public Works, Report No. 96-848, went into some detail on the nature of liability under S. 1480 did it not?

Mr. STAFFORD. Mr. President, Senator SIMPSON is correct. As reported by the committee, S. 1480 and its accompanying report set the standard of liability as one of joint, several, and strict liability. However, in order to avoid confusion over new language the compromise bill simply defers to existing law in section 311 of the Clean Water Act which already provides a liability standard for recovery of costs for response and remedial actions in preventing and cleaning up releases or discharges of hazardous substances [Sec. 101(32)].

Mr. SIMPSON. Mr. President, I find that to be a major improvement since there are various common law and statutory doctrines of "strict," "no fault," or product liability.

Mr. STAFFORD. The standard of liability in this compromise is the same as the liability under section 311(f)(1) of the Federal Clean Water Act. By referring to this section we avoid any confusion that might result from new langauge. The liability standard under section 311 will apply, unchanged, to this bill.

This is not an embodiment of other forms of no fault liability or innovative Federal intrusion into the law now developing within individual State jurisdiction.

Mr. President, Senator SIMPSON has expressed the intentions of myself and Chairman RANDOLPH on this point. In addition, the words "strict, joint, and several" are not used in the substitute with respect to liability.

Mr. SIMPSON. Mr. President, I should also like to pursue the measure of damages which would be used in determining liability for injury to natural resources. The committee report on S. 1480 had stated, as does this substitute, that costs for restoration and replacement would not be the limit for recovery [Sec. 107(f)]. I am aware that the methods for assessing resource damages is early in its development as a precise science. However, I believe that some guidance must be given by Congress in this area since the definition of natural resources in section 101(16) covers a very broad array of economic and esthetic values.

Mr. STAFFORD. Mr. President, let me respond to the Senator's concern by saying it is our intention that no damages for injury to natural resources be pursued until a restoration plan is developed and that rehabilitation and replacement of natural resources be accomplished in the most cost-effective manner possible. Our position has not changed on this point [Sec. 111(i)].

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Mr. SIMPSON. Mr. President, I agree that rehabilitation should be planned and cost effective—those are sound principles of public administration. I also trust that the traditional legal rules for calculating of damages for injury in tort will be observed as part of cost effectiveness. For example, the law achieves cost effectiveness by awarding the difference in value before and after the injury, and where the injured interest can be restored to its original condition for less than the difference in value, the cost of restoration is used.

Such approaches are still the most fundamentally sound in determining damages.

I am concerned about the scope of the provision in **section 107(c)(3)** which suggests that persons who are liable for a release or threat of a release may be liable for punitive damages in an amount at least equal to and not more than three times the amount of any cost incurred by the fund if they fail to properly provide removal or remedial action upon order of the President pursuant to section 104 or 106. For the purposes of legislative history, I would like to ask the chairman of the committee and the ranking minority member of the committee several questions regarding this provision.

First, I read the second sentence in **section 106(a)**—which grants the President authority to issue orders necessary to protect the public health and welfare and the environment—to be authority that may be exercised when the President believes there is an imminent and substantial endangerment to the public health or welfare or environment because of an actual or threatened release of a hazardous substance.

Thus, I consider the language of the first sentence of **section 106(a)**, limiting action to cases where the President determines there is an imminent and substantial endangerment, and the first sentence of **section 106(c)**, requiring the publication of guidelines for using emergency response authority, to apply only to the President's authority under **section 106** to issue orders.

Mr. STAFFORD. Yes, the Senator is correct.

Mr. SIMPSON. Under **section 107(c)(3)**, punitive damages may be imposed only when the failure to take proper removal or remedial action upon order is "without sufficient cause." What is intended by the phrase "without sufficient cause"?

Mr. STAFFORD. We intend that the phrase "sufficient cause" would encompass defenses such as the defense that the person who was the subject of the President's order was not the party responsible under the act for the release of the hazardous substance. It would certainly be unfair to assess punitive damages against a party who for good reason believed himself not to be the responsible party. For example, if there were, at the time of the order, substantial facts in question, or if the party subject to the order was not a substantial contributor to the release or threatened release, punitive damages should either not be assessed or should be reduced in the interest of equity. There could also be "sufficient cause" for not complying with an order if the party subject to the order did not at the time have the financial or technical resources to comply or if no technological means for complying was available.

We also intend that the President's orders, and the expenditures for which a person might be liable for punitive damages, must have been valid. In particular, they must not be inconsistent with the national contingency plan and must in the President's belief, have been required in order to protect the public health or welfare or the environment. Thus, in deciding whether a person should be liable for punitive damages, we would expect the courts to examine the particular orders or expenditures from the fund to determine whether they were proper, given the standards of the act and of the national contingency plan, taking into account the fact that a threat to the public was posed by the situation sought to be corrected. If the orders or expenditures were not proper, then certainly no punitive damages should be assessed or they shuold be proportionate to the demands of equity.

In addition, Senator SIMPSON, I would note that, in accordance with your suggestion, the original terminology of **sections 106(a)** and **107(c)(3)** referring to Presidential "requests" has been changed to Presidential "orders" in the interest of fairness to all parties.

THE SUPERFUND LEGISLATION

Mr. ROBERT C. BYRD. Mr. President, the superfund legislation has traveled a long and difficult road. The bill provides a means for chemical spills and hazardous dump sites to be cleaned up in an efficient and orderly manner. Such operations have heretofore been carried out by a patchwork assortment of Federal, State, and local authorities.

The fund created in this legislation will require those who produce hazardous substances to bear a portion of the responsibility for cleaning them up in case of accident or improper disposal.

I commend my colleague from West Virginia (Mr. RANDOLPH) for his hard work in guiding this legislation. As chairman of the Committee on Environment and Public Works, he has been a leader in the effort to build a consensus. Senator STAFFORD, the ranking minority member of the committee, has also persevered in the search for a consensus. I commend Senator CULVER, chairman of the Resource Protection Subcommittee, who has added his considerable knowledge to the discussions, and Senator DOMENICI, who has contributed in a similar manner to this bill.

I thank the minority leader (Mr. BAKER) for his efforts on behalf of the superfund legislation. His leadership and cooperation have helped make today's action on this bill possible.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read a third time.

Mr. RANDOLPH. Mr. President, this is a revenue measure and we so understand it. I therefore ask unanimous consent that the Senate proceed to the consideration of H.R. 7020 and that all after the enacting clause be stricken and the language of S. 1480, as amended, be inserted in lieu thereof.

The PRESIDING OFFICER. Is there objection?

Mr. RANDOLPH. I do not believe there is any objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive, hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. RANDOLPH. Mr. President, if we were to have another rollcall, it would be on the substance of what we have already voted in the Senate. That does not mean that it could not be asked for, but I see no reason for it. It would be a similar vote.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 7020) was passed.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that further action on S. 1480 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, I further ask unanimous consent that the title of H.R. 7020 be amended to carry the Senate title.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the title was amended.

Mr. RANDOLPH. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that 500 copies of H.R. 7020, as passed by the Senate, be printed for the use of the Committee on Environment and Public Works.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, the contributions of the Senate leadership have been substantial in the development and adoption of this compromise legislation. The majority leader, Senator ROBERT C. BYRD, my colleague from West Virginia, utilized his legislative skills, as did the minority leader, Senator HOWARD BAKER, in bringing the parties together and helping us to fashion this realistic and workable compromise. I thank them for their dedication to making the legislative process effective.

As always in major legislation of this type, we also owe much to our staffs who carry out much of the preliminary research and help to guide us through the many issues we must face, both in committee and in the Senate. Our thanks on this measure go to

committee staff, both majority and minority, including John Yago, Bailey Guard, Phil Cummings, Curtis Moore, Sally Walker, Paul Fadelli, Martha Pope, Lee Fuller, James Range, Linda Findlay, and Bill Donovan.

I also acknowledge the contributions of Karl Braithwaite, who was a member of the committee staff throughout the development of the bill in committee, and Andy Mank, who has devoted the past year to assisting us on this subject as a technician detailed to the committee from the Environmental Protection Agency.

Mr. BAKER. Mr. President, passage today of S. 1480, as amended, is a major legislative landmark of this Congress and the result of patience, persistence, and compromise.

As a member of the Committee on Environment and Public Works, I am painfully aware of the complex and difficult issues involved in toxic waste disposal and cleanup. Existing law has often proven inadequate to address these questions. My own experience in relation to a significant hazardous waste problem in the Memphis-Shelby County area has convinced me of the need for more modern and comprehensive legislation. The result of our search for a workable legislative vehicle is the superfund compromise which the Senate has just adopted.

Many Senators have spent long and tedious hours fashioning this agreement. My particular thanks goes to Senators STAFFORD and RANDOLPH for their reasoned and thoughtful leadership. They have met the high standard of statesmanship which the Senate and the American people have come to expect of them and are deserving of special recognition and gratitude. Passage of a superfund bill is a direct consequence of their intelligent stewardship of this measure.

United States Senate

WASHINGTON, D.C. 20510

December 2, 1980

Honorable James J. Florio
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Florio:

Let us first express our appreciation to you and the many other Members of the House who have worked so long and hard to see a "superfund" bill enacted. We know that during the past several days you have continued to press for a sound and workable bill and know how difficult that must be because we have only recently completed that formidable task in the Senate. That is the reason we are writing.

On Monday, November 24, the Senate passed a compromise "superfund" bill and sent it to the House by a vote of 78 to 9. That the bill passed at all is a minor wonder. Only the frailest, moment-to-moment coalition enabled it to be brought to the Senate floor and considered. Indeed, within a matter of hours that fragile coalition began to disintegrate to the point that, in our judgment, it would now be impossible to pass the bill again, even unchanged.

We say this not in a spirit of ultimatum, but with the hope that you and your Members will appreciate the difficult situation here in the Senate. Our bill was brought to the Floor not because a large number of Senators supported it, but because a large number agreed not to oppose it. The bill represents an extremely delicate balancing of interests. In fact, it made its way through the Senate only because there was unanimous consent that there would be no changes to the compromise. Senators accepted distasteful provisions because they saw others do likewise and because virtually every Member agreed on the need for a bill.

We know that some Members of the House are dissatisfied with the Senate-passed bill. But it was the best bill we could pass. Had we changed a coma or a period, the bill would

have failed. With the evaporation of the balance of interests which permitted us to go to the Floor in the first place, amendments to the bill will kill it if it is returned to the Senate.

We sincerely hope you will accept that statement in the spirit in which it is intended. It is not a comment on the merit or lack of merit of any particular amendment or a collection of them. It is our assessment of the fate which would greet an amended bill if returned to the Senate.

Specific mention has been made of adding an oil spill provision. That was suggested in the Senate, but agreement could not be reached on a specific provision, so none was offered. Personally, we both agreed on the desirability of such a Title but unanimity could not be reached among others interested. Some disagreed with increasing the size of the Fund. Others disagreed with the creation of a private right of action, whether against a Fund or against a spiller. Others disagreed with preemption provisions. Others disagreed with limitations on liability, especially as they related to inland oil barges. In short, we could not even reach a consensus, much less unanimity. And in the context of an eleventh-hour session of the Senate, unanimity was absolutely necessary. Nothing less would do, either then or now. Specifically, the Senate could not then and cannot now accept an oil spill title in this bill, whether it was within the $1.6 billion limit or outside it.

The Senate has passed a bill. It is not what we would have wanted under other circumstances, but it was the best we could do at the time. In fact, it was the only bill we could pass at the time and we do not believe it can be passed again.

Thanks again for all of your hard work and support.

Truly,

Robert T. Stafford

Jennings Randolph

[From the Congressional Record, Dec. 3, 1982, pp. H11773-H11803]

HOUSE DEBATE ON THE SENATE AMENDMENTS

HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a hazardous waste response fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause, and insert:

* * * * * * *

[See Public Law 96-510, previously reproduced at p. 3 of this volume, for text of Senate amendments.]

The SPEAKER pro tempore (Mr. NATCHER). Is a second demanded?

Mr BROYHILL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. FLORIO) will be recognized for 20 minutes, and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from New Jersey (Mr. FLORIO).

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Senate has amended the House superfund bill, H.R. 7020, and returned it to the House for our consideration.

Let me begin by summarizing the Senate amendments, and then compare them with the House bill. I think it will quickly become clear that the Senate amendments retain both the substance and the intent of much of the House-passed bills, and the responsible course for the House to take is to pass these amendments promptly and send them to the President for his signature. In this way we can get on immediately with the business of cleaning up the thousands of hazardous waste sites which dot this country and also insure that a mechanism is in place to respond to spills of dangerous substances.

The broad jurisdiction of the Senate Environment and Public Works Committee has permitted it to take the essential elements

of the House bills H.R. 7020 and H.R. 85, with the exception of the oil title, and combine them in one response fund.

The elimination of the oil title causes many of us aggravation and a certain amount of distress, and I particularly want to emphasize that point. Many of the members of this committee—just to name a few—Messrs. BREAUX, BIAGGI, ROBERTS, STUDDS, and SNYDER, and many others have worked very hard to produce that oil title. Notwithstanding that deficiency in the bill, the balance of this bill is essentially the House legislation, and it is good, needed legislation.

The total in the Senate amendments is nearly identical to the House bill. They establish a $1.6 billion fund over 5 years, to be used for the payment of response costs, remedial actions and damages to natural resources caused by releases of hazardous substances [Sec. 111] . Industry taxes would contribute 87.5 percent of the total fund [Secs. 211 and 303], while 12.5 percent would come from general revenues [Sec. 221 (b)(2)]. Like the House bill, taxes are levied on feedstocks, inorganic chemicals, and oil. The fund has a limited borrowing authority, but all funds borrowed must be repaid by October 1, 1985 [Sec. 223 (c)].

The President is given appropriate response authority whenever a hazardous substance is released into the environment or whenever there is a release of certain pollutants or contaminants which are particularly health-threatening [Sec. 104].

Both Houses addressed the key concerns which had to be dealt with in hazardous substance legislation. First, the Government has been given the necessary authority to respond to hazardous substance releases and to provide full protection of the public health and environment. Second, a fund is created to provide the vital resources necessary to undertake cleanup and response efforts [Sec. 221]. Third, a strong liability scheme will insure that those responsible for releases of hazardous substances will be held strictly liable for costs of response and damages to natural resources. The defenses to liability adopted by the Senate are essentially identical to those contained in the House bill. The Senate amendments also include certain limits on liability depending on the type of incident which occurs [Sec. 107].

States are required to undertake 10 percent of remedial costs above expenditures of $1 million, to assure future maintenance, and the availability of a permitted disposal facility [Sec. 104(c)]. While States are prohibited from requiring persons to contribute to a fund to pay for the same costs or damages compensable under this bill, they are not prevented from imposing additional liability or responsibility with respect to a release of hazardous waste [Sec. 114].

As I noted earlier, in accepting the Senate's amendments to H.R. 7020, the House is adopting a bill whose key provisions are similar to or the same as H.R. 7020 as it was passed by the House in September. These similarities are worth highlighting because they may not be readily apparent to all given the different structure of the Senate amendments.

LIABILITY

The liability provisions of this bill do not refer to the terms strict, joint and several liability, terms which were contained in the version of H.R. 7020 passed earlier by this body [Sec. 107]. The standard of liability in these amendments is intended to be the same as that provided in section 311 of the Federal Water Pollution Control Act; that is, strict liability [Sec. 101(32)]. I have reviewed carefully the statutory language, the floor statements from the Senate, and the language and precedents under section 311 of the Clean Water Act. I have concluded that despite the absence of these specific terms, the strict liability standard already approved by this body is preserved. Issues of joint and several liability not resolved by this shall be governed by traditional and evolving principles of common law. The terms joint and several have been deleted with the intent that the liability of joint tort-feasors be determined under common or previous statutory law.

With respect to strict liability, this bill contains no significant change from that in our earlier bill. Liability remains "subject only to the defenses" provided in the bill. That is, a defendant can escape liability only if he establishes that the release or threatened release is caused solely by an act of God, an act of war, or an act or omission of a third party, with third parties being narrowly defined. Thus, the absence of negligence is not a defense to liability. These limited defenses are lifted almost verbatim from our earlier passed bill. Since reference to section 311 standards of liability is necessary only where not superseded by standards of this bill, these defenses, and not those of section 311, will control.

The case law which has developed under section 311 indicates that courts consider this section to create a standard of strict liability qualified only by the limited defenses contained therein. I would like to introduce into the RECORD a letter from the Assistant Attorney General which summarizes that case law.

As originally passed, H.R. 7020 provided for joint and several liability, but qualified that standard with two statutory apportionment provisions which modified the applicability of such a standard. This bill sets forth the classes of persons (for example, owners, operators, generators) who are liable for all costs of removal or remedial action, other necessary costs of response, and damages to natural resources. Rather than announce the standard, and then cut back on its applicability, this bill refers to section 311 of the Clean Water Act and to traditional and evolving principles of common law in determining the liability of such joint tortfeasors. To insure the development of a uniform rule of law, and to discourage business dealing in hazardous substances from locating primarily in States with more lenient laws, the bill will encourage the further development of a Federal common law in this area.

I might point out that section 311 has been interpreted by the Coast Guard, the Government body responsibile for administering the section 311(k) revolving fund, as imposing joint and several liability under appropriate circumstances. I would like to introduce a letter from the chief counsel of the Coast Guard on this subject. This established policy seems particularly applicable in cases of

hazardous waste sites, where several persons have often contributed to an indivisible harm.

The basic concept of creating response authority and a response fund to prevent and remedy health and environmental threats from releases or threatened releases of hazardous substances is the same in both the House and Senate version of H.R. 7020. Both bills also establish liability for persons responsible for releases.

Liable parties would be obliged to reimburse the fund for Government cleanup costs in responding to an environmental emergency involving a release or threatened release of hazardous substances.

The Senate amendments to H.R. 7020 add response authority for hazardous substances which are not hazardous wastes [Sec. 101(14)]. In expanding the scope of H.R. 7020, the Senate incorporated concepts from another House-passed bill: H.R. 85, thus, the Senate version of the bill contains a funding level of $1.6 billion, which is essentially equal to that of the original H.R. 7020, at $1.2 billion plus that portion of H.R. 85 related to hazardous substances at $375 million. In addition to similar funding levels, both House and Senate "superfund" bills contain funding authorizations for a 5-year period [Sec. 221].

Both bills have equivalent revenue raising mechanisms. An excise tax on the production and importation of crude oil, petrochemical feedstocks, and certain inorganic elements and compounds provides a majority of the revenues [Sec. 211]. Appropriations from general revenues provide the balance of revenues in each bill [Sec. 221]. The Senate bill is actually a composite of both House superfund bills in this regard. H.R. 7020 raises 75 percent of its funds from the industry-based excise tax and 25 percent from general revenues. H.R. 85 raises 100 percent of its revenues for hazardous substance response from an industry-based tax. The Senate bill splits the difference of the two House bills by raising 87.5 percent of its funds from the industry tax and 12.5 percent from general revenues [Secs. 221 and 303].

The uses to which the fund can be put are similar in both bills. These include payment of Government costs in responding to releases or threatened releases of hazardous substances and payment for restoration of damaged natural resourses [Sec. 111].

In both bills, the President is directed to develop a national response plan. The plan in each case would be subject to normal rulemaking procedures and, once adopted, would provide the framework for all actions under each bill [Sec. 105].

In addition to the similarities of the two bills, the Senate version contains a number of provisions which have been incorporated directly from the original House bill. These include:

Defenses to liability [Sec. 107(b)];

A cost-balancing test to determine the appropriate level of response to an individual release incident [Sec. 104(c)];

Criteria which define permissible conditions for taking response actions off-site from a facility where hazardous substances were released [Sec. 101(24)];

Worker safety and protection provisions [Secs. 104(f) and 301(f)];

A study to explore alternative funding measures [Sec. 301(a)]; and

A study to examine difficulties in siting new hazardous waste treatment, storage, and disposal facilities [Sec. 301(d)].

Regarding the preemption language contained in these amendments, I would point out that some States, including my own State of New Jersey, have successful spill funds and that while States may not create duplicate funds to pay damages compensable under this bill, there is no preemption of the State's ability to collect taxes on fees for other costs associated with releases that are not compensable damages as defined in this legislation. It is also intended that State funds can be used to provide the required 10-percent State match [Sec. 114].

I believe the House is prepared to accept and pass the Senate amendments to H.R. 7020 in part because of its similarities to the House bill. In doing so, a number of clarifications to the Senate bill are in order. I will submit these technical corrections and clarifications for the RECORD at this point.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., December 1, 1980.

Hon. JAMES J. FLORIO,
Chairman, Subcommittee on Transportation and Commerce, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: You requested the Department's views on the liability provisions contained in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as passed by the Senate on November 24, 1980.

The liability scheme in this bill, set forth in **section 107**, provides that, subject to certain defenses, four categories of persons involved in handling hazardous substances "shall be liable" for, *inter alia*, costs of remedial action incurred by the United States Government (or a State) and damages due to the injury or destruction of natural resources. According to the definition provided in **section 101(32)**, "liable" or "liability" . . . "shall be construed to be the *standard* of liability which obtains under section 311 of the Federal Water Pollution Control Act" (FWPCA). (Emphasis added.) Under the bill passed by the Senate, liability is subject only to the defenses provided in **section 107(b)**. That is, a defendant can escape liability only if he establishes that the release or threat of release and the resulting costs are caused *solely* by an act of God, an act of war, or an act or omission of a third party, with third parties being narrowly defined.

According to Senator Randolph, chairman of the Committee on Environment and Public Works and floor manager of this bill, "unless otherwise provided in this act, the standard of liability is intended to be the same as that provided in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321). I understand this to be a standard of strict liability. . . . As under section 311, due care or the absence of negligence with respect to a release or threatened release of a hazardous substance does not constitute a defense under this act." *Cong. Rec.*, 96th Cong., 2d Sess., Nov. 24, 1980, S. 14964.

Senator Randolph is correct in stating that the liability standard under section 311 is one of strict liability. Both the Senate passed "Superfund" legislation and section 311 provide for liability subject to certain specifically enumerated defenses. Neither provision allows for a defense based on the defendant's non-negligent conduct or exercise of due care. Caselaw construing section 311 clearly indicates that not only are the defenses to be narrowly construed but the plain meaning of the liability regime establishes a strict liability standard. *See Steuart Transportation Co.* v. *United States*, 596 F. 2d 609, 613 (4th Cir. 1979); *Burgess* v. *M/V Tamano*, 564 F. 2d 964, 982 (1st Cir. 1977). It should be pointed out that both decisions rely to some extent on the legislative history of section 311. *See*, specifically, H.R. Conf. Rep. No. 91-940, 91st Cong., 2d Sess. 39, reprinted in [1970] *U.S. Code Cong. & Admin. News*, pp. 2712, 2724; Healy and Paulsen, Marine Oil Pollution and the Water Quality Improvement Act of 1970, 1 *J. Mar. L. & Com.* 537, 558-61 (1970). Moreover, we are aware of no case under section 311 permitting a defense based on the absence of negligence.

Thus, the Senate chose to delete the term "strict" from the liability section of the bill and instead to rely upon the formulation of strict liability previously established in section 311. In order to assure that no inference against strict liability might be drawn from this deletion, **section 302(d)** provides:

"The provisions of this Act shall not be considered, interpreted or construed in any way as reflecting a determination, in part or whole, of policy regarding the in-

applicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities."

Another aspect of the liability standard concerns the applicable liability where two or more persons are responsible for a release or threat of release. As you are aware, the reference to joint and several liability contained in the original liability provision of S. 1480 was deleted. It is clear, however, that this deletion does not in any way preclude courts from imposing joint and several liability where appropriate. This conclusion is fully supported by both the bill itself and its legislative history. **Section 107(e)(2)** provides:

"Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person."

This provision, in our view, confirms that a defendant held liable for response costs has the right to seek contribution from any other person responsible for a release or threat of release of a hazardous substance. A right of contribution is only of value to a defendant who has been held jointly and severally liable. This view is entirely consistent with the legislative history of this bill. Senator Randolph addressed this point with the following remarks:

"It is intended that issues of liability not resolved by this act, if any, shall be governed by traditional and evolving principles of common law. An example is joint and several liability. Any reference to these terms has been deleted, and the liability of joint tort feasors will be determined under common or previous statutory law."

It is the Department's view that common law provides for joint and several liability where the act or omission of two or more persons results in an indivisible injury.* It is also our view that where the actions of two or more persons, otherwise liable under FWPCA, combine to cause the release of oil or hazardous substance, those persons are jointly and severally liable for clean-up costs under section 311. In fact, Congress took care to provide a right of contribution among those responsible for a release in subsections (g) and (h) of section 311.

We hope this information is responsive to your request.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General,
Office of Legislative Affairs.

SEPTEMBER 20, 1978.

Attn.: Mr. William D. Gall.
Mr. PHILIP BERNS,
Attorney in Charge, West Coast Office, Department of Justice, San Francisco, Calif.

DEAR SIR: Reference is made to Mr. Gall's letters, WDG:nm, 61-11-2577, of 8 June 1978 and 24 August 1978, concerning *United States* v. *D/B Healy Tibbits No. 4 et. al., in rem.*, N.D. Cal.—Civil No. C 77-1698 SW. In the letter of 8 June, Mr. Gall requested the views of the Coast Guard on the interpretation of 33 U.S.C. 1321. The question specified in the letter is "whether the statute allows the United States to proceed against the owner of a vessel for cleanup costs, where the discharge resulted through the sole fault of the vessel bareboat charterer and operator." From the remainder of the letter it would appear that the issue more narrowly stated is whether an action may be presented under 33 U.S.C. 1321(f)(1) against the owner of a vessel when the parallel action against the operator (bareboat charterer) of that vessel, who bore a significantly greater degree of fault in the discharge occasioning the incurrence of the removal cost for which recovery is being sought, has been dismissed.

The question arises from an expectation that the vessel owner in the referenced case will argue that the language "owner or operator" does not contemplate joint and several liability, particularly where one of those parties was in no way at fault and, in addition, where the action against the party most at fault has been voluntar-

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*See, generally, Prosser, *Law of Torts*, (4th ed. 1971), pp. 315, 316; *Restatement of Torts, Second* § 879. An indivisible harm is frequently the situation at hazardous waste sites where many parties have contributed to the contamination or other endangerment and there are no reliable records indicating who disposed of the hazardous wastes (or in what quantities). An analogous situation involving water pollution from different sources has led to the imposition of joint and several liability in several cases. See, for example, *City of Valparaiso* v. *Moffit*, 12 Ind. App. 250, 255, 39 N.E. 909 (1895); *West Muncie* v. *Slack*, S. Ct. Ind., N.E. 879 (1904).

ily dismissed by the United States. It would appear that there are three issues involved here:

a. Does the Act provide for several as well as joint liability;

b. To what degree does the relative fault of the owner and operator play in determining liability under the Act; and

c. What is the effect of a settlement with and dismissal of the action against one party on the liability of the other party.

With respect to the first of the issues, it is my view that the statute clearly contemplates several liability by the use of the disjunctive "or". This provision cannot be read to *require* that in every case both the owner and operator be joined in an action to recover removal costs under 33 U.S.C. 1321(f)(1). (I should note that it is also my view that it is not the intent of Congress to prevent a joinder in an appropriate case, for the word "or" need not be read *solely* in the disjunctive sense, but clearly contemplates joint liability as well to achieve the remedial effect of the Act.)

As to the role of fault in the liabilities established under this provision, it is my view that the strict liability scheme which it establishes bars any consideration of fault except as one of the enumerated defenses pertains. The remedy for the recovery of removal costs under 33 U.S.C. 1321(f)(1) should be strictly governed by its provisions. (The remedy under other laws and legal theories is not so constrained.) Since, as discussed in the foregoing paragraph, there is clearly several liability for removal costs, the existence or non-existence of fault on the part of either an owner or operator vitiates neither his own nor the other's liability under this statute. However, in the context of this particular case it is important to note that, should recovery be obtained from an owner or operator who was without fault, he would normally be entitled to seek indemnification or contribution from the other party who, in fact, was at fault.

The third of these issues cannot, in my view, be answered with the degree of certainty as the former two. Certainly, if the United States obtained through settlement with one party an amount equal to the removal costs incurred, it would not be possible to recover an additional amount from the other party. Further, should an analogy be drawn to the general tort law, the court might be expected to find that full settlement of the United States claim has been made absent an implied or expressed contrary intent. It would follow that a court might very well carefully examine the nature of a settlement, such as the one made in this case, in order to determine whether the United States was fully compensated.

It may be expected that the equities in this case would bear heavily on the court's resolution of this particular question. In particular, the court might well take into account the prejudicial effect of the settlement with the operator on the owner's right to contribution and indemnification referred to above.

It is this last matter which gives me most concern about the continued prosecution of this case. If we could assume that the worst outcome would be a decision of the court limited to a finding that by its settlement with the bareboat charterer the United States was fully compensated, the case might well be prosecuted in order to determine whether the court would so decide. However, the equitable position of the United States here may well lead the court to render a decision having an unfavorable precedential effect on the other issues discussed above and referred to in Mr. Gall's letter.

For this reason, unless we can limit the issues before the court to either the first two discussed about (the most favorable to the United States) or to the third alone, I strongly urge that the action against the owner and the vessel be voluntarily dismissed.

There are two matters which I feel should be brought to your attention if you decide to continue the action against the owner in this case. First, you may wish to consider whether 33 U.S.C. 1321(f)(1) establishes liability for the recovery of the cleanup costs incurred in this case in view of language found in that paragraph and in 33 U.S.C. 1321(d) which specifies the sorts of costs recoverable thereunder. Your attention is drawn in this connection to 40 CFR Part 1510, respecting the National Oil and Hazardous Substances Pollution Contingency Plan, for an exposition of the interagency relationships which apply when action is conducted under 33 U.S.C. 1321(c). Removal costs incurred under that subsection are recoverable under 33 U.S.C. 1321(f)(1). Second, your attention is further drawn to 33 U.S.C. 1321(h) which provides that sums received by the United States under 33 U.S.C. 1321 are to be deposited in the revolving fund established thereunder. I am not sure that this would be consistent with the reason for this litigation, the recovery by the Navy for the cleanup costs which it has expended.

Thank you for the opportunity to comment on the foregoing matters.

Sincerely,

G. H. PATRICK BURSLEY,
Chief Counsel.

TECHNICAL CORRECTIONS

For example, the definition of "facility" is necessarily a broad one. It explicitly defines facility as, among other things, any site or area where a hazardous substance has been deposited, stored, disposed of, or otherwise come to be located. This latter phrase clearly includes a hazardous waste treatment facility such as an incinerator or other type of treatment facility **[Sec. 101(9)]**.

The definition of "federally permitted release" includes releases in compliance with sections 3005(a)–(d) of the Solid Waste Disposal Act, as amended, with certain qualifications. It should be clear that a permit issued under section 3005 by a duly authorized State under section 3006 of that act would also be considered a federally permitted release if the qualification related to the hazardous substance being specified in the permit is met. Sections (e) and (g) of this definition are related with regard to underground injection of hazardous substances since such injection may ultimately be regulated under either the Solid Waste Disposal Act or the Safe Drinking Water Act **[Sec. 101(10)]**.

The term "hazardous substance" includes hazardous wastes as defined by the Solid Waste Disposal Act but excludes wastes whose regulation has been suspended by act of Congress. In adopting the Senate amendments, the House understands that such exclusions are applicable only during the period of suspension **[Sec. 101(14)]**.

In agreeing to the Senate amendments, the House intends that **section 103(c)**, relating to reporting of facilities having hazardous substances, be administered by the administrator of EPA in such a way as to insure the receipt of the maximum amount of relevant information while minimizing unnecessary and burdensome requirements.

A number of technical errors were apparently made in the drafting of the Senate amendments. These errors are elaborated upon below and the true intent of Congress relative to the errors is outlined:

Section 107(a)(1) identifies vessels as being liable under the bill. The term "vessels" is modified by the phrase "(otherwise subject to the jurisdiction of the United States)" in section 107(a)(1). It is not the intent of Congress to exclude foreign vessels from liability for releases into waters under the jurisdiction of the United States. The true intent of Congress is not to qualify the term "vessels" in **section 107(a)(1)** and instead to apply **section 107(c)(3)** to releases or threats of release respecting a vessel located seaward of the contiguous zone only to the extent that the vessel, its owner, or its operator was, at the time in question, otherwise subject to the jurisdiction of the United States.

In providing that limits of liability may be inapplicable under certain circumstances, **section 107(c)(2)** borrows language directly from section 311(f) of the Clean Water Act. In so doing, the terms "willful negligence" and "willful misconduct" were inadvertently reversed. The intent of Congress is to provide the same inapplica-

bility to liability limits as that provided in the Clean Water Act. The inadvertent order reversals is not meant to impart any different meaning than that contained in section 311(f) of the Clean Water Act.

An apparent typographical error in **section 107(f)**, which appears on page 116, line 6 of the printed bill, has resulted in the phrase "* * * or other comparable environment analysis". This phrase should read "or other comparable environmental analysis."

Section 107(k)(4)(d) gives the President authority to issue rules and take other necessary actions to effectuate the liability provisions. This subparagraph states that the President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph. The word "paragraph" should be read as "section" to accurately convey the intent of the Congress.

The Senate bill creates a post-closure liability fund and finances this fund by a tax of $2.13 per dry weight ton of hazardous waste received at a hazardous waste disposal facility and remaining at such a facility after its closure. The term "dry" in dry weight ton should be interpreted as removing the weight of any water in any hazardous waste in calculating its weight **[Secs. 231 and 232]**.

□ 1700

Let me just conclude by giving to you my impression that this is a good bill and those of us who overwhelmingly supported this bill when it came before the House can be happy to support it now. The overriding majority of the people in this House who passed it and the people who passed it in the other body were responding to the pressure from this Nation to provide for a remedial action for the problem of abandoned hazardous waste sites and chemical spills.

It should be made clear that without this legislation there is a huge legislative void that exists. There is no authority. There is no funding to deal with certain types of hazardous waste spills and hazardous waste dangers to health and to the environment.

There will be those who say that the bill is not perfect. Of course it is not. There will be those who say that we could do more and we could, particularly with regard to the oil spill provision. There will be those who say that this bill does too much, and though I disagree with them, I respect their views on the subject. There are those who say that we should not even deal with this subject matter and we should wait until another time. With those I disagree violently.

The time is now to deal with this problem. There are some who are incensed at the procedural situation we find ourselves in now, saying that the other body waited for 4½ months to deal with this legislation and now at the 11th hour has sent us a bill that we must act upon in order to have this bill enacted into law. I would suggest that that position is correct, that we should be incensed. But that is not the paramount concern at this point. The concern is whether we are going to have legislation or whether we not going to have legislation.

Some Members have come to me and said we should amend this, add things on, send it back to the Senate and let them take the

heat, let them do something and be responsible for the bill dying if it dies. I am not prepared to play chicken with this issue because that is a game where there is only one loser and it is not the House, it is not the Senate, it is the American people.

Accordingly, I would ask for your support for this bill and ask for your support so that we can have this bill sent to the President and have it signed into law.

Mr. BROYHILL. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I rise in opposition to the motion of the gentleman from New Jersey (Mr. FLORIO) and urge the House to defeat this motion to suspend the rules and to pass this legislation. Now, we are close, very close to a reasonable resolution of this major piece of legislation. Yet, it seems to me that we are being asked here to pass a bill that has dozens of defects in it when all we would have to do is to add reasonable amendments and send that back to the other body and have them pass a bill that will be administratively workable.

Now, many of us have supported this concept of a superfund to clean up abandoned sites and to take care of chemical spills and also oil spills. But there are many defects in this bill.

I have in my hand a three-page list of various defects and technical errors that are in this bill and I also have in my hand a list of amendments which have been agreed to in principle by not only the gentleman from New Jersey, but also by Members of the other body who have been working so hard for this bill. It just does not make good sense that we abandon our responsibilities as legislators in this body and pass a bill which is technically flawed. These modifications can be made. They can be sent to the other body and then they pass it and send it on to the President for signature.

One glaring error, for example, there is the authority here for the agency to spend moneys for administrative costs that are not subject to the overview or purview of the Committee on Appropriations. I know this body would not want to see that happen. In other words, the agency would have unlimited rights to spend money from the fund for administrative costs **[Sec. 111(a)]**.

Here is a list of serious and technical problems with this bill.

Clean Water Act.—H.R. 7020 creates great uncertainty as to its affect on the Clean Water Act. **Section 304(c)** of the bill provides that "In any case in which any provision of section 311 of the Federal Water Pollution Control Act is determined to be in conflict with any provisions of this Act, the provisions of this act shall apply." No guidance is given concerning the affect of this bill on the Clean Water Act when provisions of both pieces of legislation address the same issues in different but not inconsistent fashion. For instance, are financial responsibility requirements under H.R. 7020 to be in addition to or in replacement of those set under the Clean Water Act **[Sec. 108]**?

Clean Air Act.—H.R. 7020 provides even less guidance concerning its affect on the Clean Air Act. The bill contains no provision under the conforming amendments section **[Sec. 304]** concerning this matter, despite the fact that, by virtue of the definitions of environment and release **[Secs. 101 (8) and (22)]**, its coverage clearly encompasses many of the same matters already regulated under the Clean Air Act.

Inadequate drafting.—This bill was hurriedly drafted without the use of legislative counsel and as the result contains a large but unknown number of drafting errors. In just one night of review, legislative counsel has identified more than 45 technical errors alone. No one is certain how many other technical errors and internal inconsistences, not to mention substantive deficiencies, may be discovered under closer scrutiny.

Liability uncertainty.—H.R. 7020 establishes a major new Federal scheme imposing liability on a broad spectrum of the industrial and transportation sectors. How-

ever, the bill is unexcusably vague in terms of identifying who should be liable and for what. For instance, under the language of **section 107** the owner or operator of a vessel or a facility can be held strictly liable for various types of costs and damages entirely on the basis of having been found to be an owner or operator of any facility or vessel. There is no language requiring any causal connection with a release of a hazardous substance.

One-pound standard.—H.R. 7020 establishes what has been called an interim reportable quantity standard [Sec. 102]. The language of the bill requires that anyone who spills one pound or more of any hazardous substance must report that fact under the provisions of the bill. However, absolutely no guidance is given concerning how to measure or determine when the one pound was released. Is it to be in a single discrete incident? In one month? one hour? one day? The bill is totally silent and, as a result, provides no meaningful guidance concerning who is subject to the $10,000 fine or year imprisonment for failure to report a release [Sec. 103(b)]. This provision should be deleted or amended to be made workable. There is a suggested amendment which is generally agreed to by all concerned, because of the procedural situation, it cannot be offered.

Preemption.—Preemption of State liability laws is much weaker than the spills provisions of H.R. 85 and the House passed sites bill had no preemption [Sec. 107].

Study of common law.—The study called for as to the adequacy of existing common law and statutory remedies should include some other organizations besides the American Bar Association, American Law Institute, Association of Trial Lawyers and National Association of State Attorneys General. The Senate put the fox in the henhouse [Sec. 301(e)].

Agency for Toxic Substances and Disease Registry.—This provision establishes a new agency called the "Agency for Toxic Substances and Disease Registry." You are voting for more government and more bureaucrats at a time that numerous existing agencies, such as the Center for Disease Control, can carry out this program [Sec. 104(i)].

Natural resources damage.—This section makes the government's quantification of natural resources damages a rebuttable presumption, a major change in common law [Sec. 111(h)(2)].

Guarantors liability.—As drafted, this language, which ostensibly addresses the failure of an insurer to swiftly and efficiently settle or pay claims could be seen as a pre-condition to claiming limitation in suits brought by third parties. The obligations of good faith run only to the insured; third party obligations are not addressed by the amendment. Other provisions of the bill address proper settlement procedures. An insurer must have the right to defend the interest of his policy holder against third party claimants. The language could allow otherwise. It subverts the intended limitation for a guarantor's liability which he must have in order to provide evidence of financial responsibility [Sec. 107(e)].

Unreasonable punitive damages.—Treble damage liability for failure "without sufficient cause" to comply with a Presidential order. This punitive damage provision is extremely onerous, does not include due process requirements, and duplicates other penalty provisions [Sec. 107(c)(3)].

Additional paperwork.—There is an extremely broad attempt to get an inventory of hazardous waste sites which are not in compliance with subtitle C of the Solid Waste Disposal Act. It would impose unreasonable and largely unknown reporting requirements on past transporters of such waste and facility owners [Sec. 103(c)].

More paperwork.—This imposes unreasonable record-keeping requirements with respect to all hazardous substances and should be narrowed to authorize the EPA Administrator to require retention of records with respect to storage, uses or releases of hazardous substances which present an unreasonable risk to human health or the environment [Sec. 103(d)].

Unfettered discretion.—The discretionary authority to take action and issue orders as deemed necessary to protect public health and welfare and the environment is virtually unlimited. This authority should be circumscribed by reasonableness requirements and cost standards related to the threat posed. In addition, concepts of nexus to or responsibility for the hazard and due process should be incorporated [Secs. 104 and 106].

Discrimination against different transportation modes.—Different transportation modes are unreasonably subject to different statutory liability limits for hazardous substance releases [Sec. 107(c)].

Unlimited spending.—EPA and other Federal agencies are given almost unlimited access to the fund. These agencies would be able to fund "overhead" and other activities without any normal safeguards provided by the appropriations process [Sec. 111].

Creates a new tax and new bottomless trust fund.—This new concept has not been fully explored. We don't know how much it is going to cost. The tax would apply equally to all hazardous waste irrespective of the relative degree of hazard of such waste [Secs. 231 and 232].

No oil spill provision.—Comprehensive oil spill liability legislation has been considered necessary since the 94th Congress. Without such a provision duplicative and narrow laws and difficulty of recovery under common law theories would continue. Thus, each coastline of the United States is inadequately protected by Federal law from oil spill damage [Sec. 101(14)].

No compensation for victims.—H.R. 7020 would authorize clean-up and natural resource restoration only. Compensation for personal injury and lost profits or wages and property of innocent third party victims has not been included.

Foreign policy problems.—H.R. 7020 would conflict with the U.S. position regarding assertion of maritime jurisdiction. The definition of environment appears to create a 200-mile pollution zone rather than addressing the effect of a discharge on U.S. natural resources. Foreign flag vessels should be liable for actual damages but no punitive damages. H.R. 7020 does not achieve this. Further public vessels are subjected to liability which raises sovereignty questions with regard to foreign public and military vessels [Sec 101(8)].

Deficient financial responsibility.—H.R. 7020 subjects insurance companies to third party direct action up to the limits of the policy rather than the certificate of financial responsibility. This type provision has effectively removed insurance as an option for providing financial responsibility under the OCS legislation and is expected to do so with this bill. Further, the bill should reflect that vessels carrying hazardous substances already establish financial responsibility and therefore should not have to duplicate this paperwork [Sec. 108].

Deficient negligence standard for liability.—H.R. 7020 includes "willful negligence within the privity of knowledge" of a polluter as a basis of liability. This is not only construed in a manner which is internally inconsistent but also creates a standard that years of effort at the Department of Justice has been unable to define [Sec. 107(c)(2)].

It is difficult, if not impossible, for me to understand how we can come so far and get so close to a reasonable resolution of a major piece of legislation, and yet fail to use good common sense and as a result see a bill go down the drain.

I voted for H.R. 7020 when it passed the House, and I spent a lot of time working very closely with several members of the Senate over the last three weeks to make sure that we would be able to get on the books a Superfund bill this year.

When the Senate passed H.R. 7020, I believed that the bill represented a reasonable legislative effort. However, there was no doubt in my mind that the House would have to make a few changes in that legislation. But lo and behold, people in the Senate and the gentleman from New Jersey have tried to tell us that we could not change one comma or one period, or we would be killing the bill.

That makes absolutely no sense. It offends my sensibilities as a person and it offends my sense of responsibility as a Member of Congress.

This bill is technically flawed. A cursory reading reveals hundreds of errors.

In addition, there are some suggested modifications of certain matters that even people in the Senate have agreed to change. There are issues that the gentleman from New Jersey has agreed that the House should address. But the Senators are saying to us, the gentleman from New Jersey is saying to the House of Representatives, do not make these changes even when they might make sense. Even when they are right, don't make these changes because it might kill the bill.

Mr. Speaker, in good conscience, I cannot legislate that way.

This is not a matter of pride of authorship. I am willing to support a bill that follows the basic outline presented to us by the Senate, but we must clean it up.

I won't go into the objections that my colleagues on Ways and Means, Public Works, and Merchant Marine Committees have to this legislation. They have far more serious, substantive objections than I have, but I have attempted to outline how ridiculous it is for us to be faced with a take it or leave it situation involving a monumentally important piece of legislation.

Mr. Speaker, there were a lot of things in the Senate-passed bill that I did not like but was willing to accept. There were a lot of things in the Senate-passed bill that did not make much sense, but I was willing to accept them in order to get a bill this year. But, Mr. Speaker, there is a limit to my ability to acquiesce. The White House, EPA, and some Members of the House and Senate made the decision that they should proceed with this bill with no amendments. That basic decision made absolutely no sense whatsoever and has put us in the bind that we are faced with today. Everyone agrees that this legislation is flawed, in many cases seriously flawed. Because of that Mr. Speaker, and because of the unwillingness of others to try and address those flaws, I have come reluctantly to the conclusion that we would be better off starting over again next year and would urge my colleagues to oppose the passage of this bill.

The SPEAKER pro tempore. The time of the gentleman from North Carolina has expired.

Mr. BROYHILL. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. HARSHA).

(Mr. HARSHA asked and was given permission to revise and extend his remarks.)

Mr. HARSHA. Mr. Speaker, the framers of our Constitution wisely created a bicameral legislature as one part of a strategy to provide for a workable and effective system of checks and balances. H.R. 7020 does violence to this concept. We have been told by the other body through letters, conversation, and lobbying by the administration on their behalf that notwithstanding a solid vote of 78 to 6, only a "fragile moment-by-moment coalition" enabled the passage of the bill by the Senate. They further inform us that they cannot even pass the bill that they overwhelmingly approved on November 24. To this Member's opinion, that is an ultimatum from our coequal brethren. This is not bicameral—it is unilateral, one house dictating to the other the law of the land—take it or leave it, are we a coequal branch of the legislature or "patsys"? Some tell us that the House should take and pass this bill and accept the fact that this is the best that can be done this Congress. Almost in the same breath they concede that this is not a good bill.

There are numerous deficiencies as our handout demonstrates. The bill is not even drafted in a technically sound manner when you consider that we are talking about imposing a tax on industry of approximately $1.38 billion [Sec. 303] and committing the taxpayers to approximately $220 million [Sec. 221(b)]. I think the people have a right to demand that that law be well written. But it is more than just a tax. We are establishing civil liability [Sec. 107] and criminal penalties [Secs. 103, 104, 106, and 112] in this legisla-

tion, and numerous questions have been raised as to what we are doing to common law with this new statute. These are not spurious issues. They are going to be litigated and the courts are going to have a field day in ridiculing the Congress on passing laws that are vague, internally inconsistent, and using tools such as superseding laws which are in conflict without any further guidance. This bill is not a superfund bill—it's a welfare and relief act for lawyers.

□ 1710

Mr. HARSHA. Any member who stands on this floor demanding more accountability and more specificity in laws, they are reasoned very carefully on this vote.

Remember this: You are already on record as having voted for a good chemical cleanup bill. The House passed H.R. 85, which addressed the issue, and properly, and this Congress voted overwhelmingly for this bill, 288 to 11, so all of you but 11 have already established the record that you are for a strong, good, properly executed cleanup bill, a bill that will eliminate these toxic wastes.

You are also on record, again, the second time, when you voted for the House version of H.R. 7020 which properly addressed the problems we have raised with this bill today, 351 to 23. So you are on record twice as favoring chemical cleanup and you can rationally and logically defend a no vote on this legislation because you are on record twice, twice before as voting for a firm cleanup bill.

I urge defeat.

Mr. FLORIO. Mr. Speaker, with the concurrence of the gentleman from North Carolina, I would ask unanimous consent that there be allocated an additional 10 minutes for each side in order to continue this debate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey.

There was no objection.

Mr. FLORIO. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana (Mr. BREAUX).

(Mr. BREAUX asked and was given permission to revise and extend his remarks, and to include extraneous matter.)

Mr. BREAUX. Mr. Speaker, I do not disagree with anything that has been said so far by the speakers who are against the bill or the ones who are for it. This is not the best way to legislate. Nobody can argue with that. I agree that the bill before us should also cover oilspills. I was a cosponsor of the legislation to cover oilspills. It should. This bill does not, however, cover oilspills.

I would like several other items I have fought for, including an amendment to section 404 of the Water Pollution Control Act to be included in this bill. It is not there. There is no question that the other body in their actions, I think, quite frankly, are not acting responsibly, but you know, there is a time for us in this body to be pragmatic and there is a time for us to be idealistic. Hopefully, we can all be the same at the same time. One thing I think is clear, that this evening we must be pragmatic. This bill contains provisions to clean up chemical spills, it contains provisions to help clean up over 3,000 hazardous waste sites, chemical waste sites in this country. Are we going to say now that because we do not like

some of the provisions, that we are going to toss the whole thing out the window and start over? Ladies and gentleman, that is not the issue.

Mr. Speaker, one Member in the other body who dislikes what we send back can kill the whole product. We have worked on this for 6 years. Let us be pragmatic and let us still be a little idealistic and say we have a product that while not perfect it is far better than what we have now, which is nothing. Vote for this now and next year we have commitment that the oilspill section will be addressed and will be taken care of. But let us not throw away the product that so many have worked for for so long.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., December 3, 1980.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, Washington, D.C.
Hon. HAROLD T. "BIZZ" JOHNSON,
Chairman, Committee on Public Works and Transportation, Washington, D.C.
Hon. THOMAS L. ASHLEY,
Acting Chairman, Committee on Merchant Marine and Fisheries, Washington, D.C.
Hon. AL ULLMAN,
Chairman, Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: We understand that a number of concerns have been raised by members of your committees regarding some provisions of the Act H.R. 7020 which passed the Senate on November 24, 1980 and is pending in the House.

Because of the need for this legislation to protect the public from the vast exposure to chemical waste and the very short time remaining in the 96th Congress, we thought it would be helpful to indicate the Administration's position on, and interpretation of several of the points of concern to the House.

First, regarding the establishment of reportable quantities of hazardous substances. **Section 102(a)** requires designation of additional substances as hazardous and requires determination of quantities for such substances which will trigger the notification provisions of **Section 103 (a) and (b). Section 102(b)** provides that pending promulgation of reportable quantities, a quantity of one pound shall be deemed the reportable quantity for all substances other than those designated under Section 311 of the Clean Water Act. This provision ensures that reporting of releases, which is essential for rapid response, will commence immediately upon enactment.

Reportable quantities have already been established for 297 substances under Section 311 of the Clean Water Act. The one pound quantity would apply to hazardous wastes (i.e., substances defined in **Section 101(14)(c)**, but notification would be handled primarily under RCRA (see **§ 103(f)**). The one pound quantity also applies to hazardous substances defined in **Section 101(14) (D) through (F)** of the bill, or less than 40 classes of substances.

The principal concerns over this provision is that EPA may not review the one pound quantity for chemicals established by the statute and drag its feet where a different quantity, after substantive review, might be appropriate. I can assure you that EPA will act within a reasonable time to propose new reportable quantities for such substances, where appropriate. We intend that changes in harmful quantities will be proposed within 270 days of enactment.

Second, with regard to health responsibilities, **Section 104(i)** grants authority to the Secretary of Health and Human Services (HHS) to coordinate activities and responsibilities under his/her jurisdiction which relate to potential health effects caused by hazardous substances. It is important that such authorities be coordinated in a single, coherent subdivision of HHS. It is the administration's view that Congress does not believe a reorganization of functions in that Department is necessary to effectuate the intent of this provision. It is our understanding that the authority provided in this subsection would be delegated to an existing unit at HHS, such as the Center for Disease Control.

Third, with regard to liability limits, **Section 107(c)** provides for limits of liability for certain transportation modes. Specific statutory limits are provided for vessels based on gross tonnage or an amount up to $5,000,000, whichever is greater. Limits for vehicles and rolling stock are somewhat higher than those for vessels, but the President is specifically authorized to provide by regulations for lower limits (as low as $5,000,000 in some cases) for certain classes of vehicles and rolling stock. Such

regulations are to take into account factors bearing on the likelihood of release for such classes of facilities and the economic impact on such classes of facilities. It is our view that it is also intended that in promulgating any such regulations, the President also take into account the competitive effects which might result from different limits among various modes of transportation. I can assure you that this is the interpretation placed on this provision by EPA.

Fourth, on the question of administrative and personnel costs supported by the fund, Section 111(a) of the Act prohibits the use of fund monies for payment of administrative and personnel costs unless those costs are reasonably necessary for and incidental to the implementation of this title. This section is intended to assure that any funds used for these costs are used for activities related to cleanup of hazardous substance releases. This would include costs of personnel actually involved in removal and remedial actions. It would also include administrative costs associated with the taking of removal and remedial actions. This provision, however, is in no way intended to allow for payment of administrative or personnel supporting response programs or program management that is not related to response actions.

It is also our view that the annual budgeting of these costs would occur within the normal budget cycle and thus be subject to appropriations.

Fifth, there is considerable concern over the inclusion of a post closure liability fund to support damage occurrences resulting from releases of waste from facilities permitted under the Resource Conservation and Recovery Act [Sec. 232]. This provision, it should be noted, does not go into effect until 1983 [Sec. 231]. During the interim, the Administration is directed to perform studies of alternative methods of providing resources for this liability including private insurance [Secs. 107(k) and 301(a)]. As a result of these studies, we would expect the Administration would submit amendments revising the post closure liability provisions of H.R. 7020 in major ways prior to the effective date of the current provision.

I hope these comments are helpful to you in House consideration of this most important legislation. It would be tragic if after all the hard work and leadership of the members of your committees this bill fails to become law in this session of Congress.

Respectfully,

DOUGLAS M. COSTLE.

Mr. BROYHILL. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. MADIGAN).

(Mr. MADIGAN asked and was given permission to revise and extend his remarks.)

Mr. MADIGAN. Mr. Speaker, there are some very serious flaws in this bill as passed by the Senate. It would have made much more sense for me to take the time to correct technical errors and to address a few of the policy concerns that are shared by Members of the House, particularly members of the Committee on Interstate and Foreign Commerce, the Committee on Ways and Means, the Committee on Public Works and Transportation and the Committee on Merchant Marine and Fisheries. However, that was not the course of action chosen by my chairman, the chairman of my subcommittee, the gentleman from New Jersey (Mr. FLORIO). We have been left at a take-it-or-leave it situation and I rise to recommend to the House that we leave it.

I would like to take this opportunity to point out that the minority members of the Committee on Interstate and Foreign Commerce were willing early last year to support legislation dealing with the problem of abandoned and orphaned dump sites. The minority of the Committee on Interstate and Foreign Commerce was ready, willing and able last year to support creation of a fund that would have been funded by fees raised within the oil and chemical industries.

More than a year has passed and this Congress has still not properly resolved the haggling over the superfund issue. It is unfortunate to me that the Senate failed to act at an earlier date. It is

equally unfortunate that the majority was not willing to take the time or make the effort to follow the normal course of the legislative process and approve this bill. This bill could have been amended in a fashion that would have been acceptable to the Senate.

Mr. Speaker, I want my colleagues to know that we in the minority were working closely with the Senate as it was developing this bill. We have continued to be in contact with Members of the Senate and we have every intention of working with the four other House committees to further perfect this legislation and send it back to the Senate where we believe it could have been considered and I think that possibility still exists.

I think we should defeat this bill on suspension, we should bring it back for amendment and then send it to the Senate for concurrence. I do not believe that we ought to ever put ourselves in the position as Members of the House of being in the position of saying to other Members of the House from the Committee on Public Works and Transportation, the Committee on Ways and Means, and the Committee on Merchant Marine and Fisheries, that they cannot be a part of the legislative process. I think we ought to reject that.

Mr. Speaker, I thank the gentleman for yielding.

Mr. FLORIO. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. STUDDS).

(Mr. STUDDS asked and was given permission to revise and extend his remarks.)

Mr. STUDDS. Mr. Speaker, I rise in reluctant support of this legislation. My reluctance stems not from what is in the bill, for I wholeheartedly endorse its contents; but rather from the inexcusable absence of an oilspill liability and compensation title [Sec. 101(14)].

It has been 5 years since Representative BIAGGI and I introduced our oilspill legislation; four winters since the wreck of the *Argo Merchant* threatened the billion dollar fishing and tourist industries of southeastern Massachusetts; 30 months since the *Amoco Cadiz* spewed 60 million gallons of oil onto 125 miles of French coastline; less than a year and a half since the IXTOC oil well blew in the Gulf of Mexico.

Major oilspills will occur again, damaging our coastline and threatening the financial survival of our fishermen and others dependent upon coastal, tourist-oriented economies.

For 5 years we have had the means to assist those injured by oilspills. Twice in the last 4 years one House of Congress has chosen to act; while the other House has simply offered one excuse or another for not acting.

Two years ago, we were told that an oilspill bill could not be enacted unless it was tied to a hazardous substance bill. Today, we are told that an oilspill bill is impossible because it would be tied to hazardous substance legislation. These rationales are nonsense, and every Member of this Congress knows it.

The procedures through which the other body can suffocate legislation are multiple, maddening, and mysterious. Those who have succeeded at chipping away at the hazardous substance portion of this legislation or who have been successful at delaying action on oil for one more Congress may think they have won a great victo-

ry—but they are wrong. We know all too well from experience that those who delay needed action, those who believe fervently that you can fight an idea whose time has come, will be proven wrong. They will be proven wrong by the *Argo Merchants* and the Love Canals of the future, and by the accusations of those innocent Americans, injured without compensation, who will ask, Where were you Senator? Where were you, Congressman? Where were you when all the world knew what had to be done and, rather than act, you merely discovered another imaginative excuse for failing to act?

Despite this obvious failing, I take heart in what we are in fact accomplishing today. I am proud of the attitude expressed by Representative BIAGGI and the others of my committee who are wise enough to place the public interest in dealing with hazardous wastes above other concerns. Furthermore, I take hope in the commitment that has been forthcoming from leaders in the other body that action on oilspill legislation will begin early next year, and that this will indeed be the last unprotected winter for those who earn their livelihood from the bountiful but fragile resources of the marine and coastal environment.

It is in that context and with that great personal reluctance that I nonetheless urge Members to support this bill.

Mr. BROYHILL. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. ROBERTS).

□ 1720

Mr. ROBERTS. I appreciate the gentleman yielding.

I rise in opposition to this bill. To start with, this is not the superfund bill. The superfund bill was H.R. 85, which came out of the Committee on Public Works and Transportation. It went over and the other body changed it around and took a little of it and added it on to a bill. The drafting is poor.

I will just touch on some of the deficiencies in this bill. To start with, I am from an oil State, and I would like to protect the oil interest, but there is no excuse whatsoever in exempting oil from this bill [Sec. 101(14)]. It is totally exempted. They also destroyed the damage section. Can you imagine oilspill or any other spill not having a damage section? That has been removed.

It creates a new tax and a bottomless trust fund which EPA can spend without reference to Ways and Means tax or going around the Appropriations Committee. They have even admitted themselves, but they say, "We will be real careful in using it." It establishes a 1-pound standard for violation. What is 1 pound? One quart of oil. If you spill a quart of oil, you would be 6 months writing all the papers; or maybe a pound of salt [Sec. 102(b)].

It is on the face of it a very, very bad bill. Now despite the fact that the White House has made 60 calls to the Capitol up here asking for help, I tell the Members that this is legislating the wrong way.

The Ways and Means Committee will also shortly give a report.

As I told the Members, the administrative funds levied by the EPA, they will be able to spend them for implementation of personnel. Both of our bills prohibited that.

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I sincerely hope that my colleagues will see fit to defer this, although I will not be here, the Members will probably do a lot better job next time and we can get a bill that ties the chemical and the oil spills together; because I tell the Members, in my opinion, they will never get one of them without getting the other one under the same tent because they will whipsaw this body to death.

I urge my colleagues to vote down this bill.

Mr. Speaker, there is one final point I would like to make with regard to this bill—that is the matter of jurisdiction.

Our Committee on Public Works and Transportation has primary jurisdiction over the pollution of navigable waters. It is under the exercise of this jurisdiction that we have developed the existing body of law relating to water pollution, including the Federal Water Pollution Control Act. Under this act, the discharge of hazardous substances into our Nation's waters is addressed as an integral part of our program to achieve and maintain the quality of our waters. The Federal Water Pollution Control Act also imposes liabilities for discharge and provides for cleanup.

Likewise, H.R. 85, reported by our committee and the Committees on Merchant Marine and Fisheries and Ways and Means, addresses these matters and also provides for a fund to cover cleanup costs and the payment of claims for economic damages caused by spills of oil and hazardous substances.

All of these matters, which are within our committee's jurisdiction, are also included in the Senate amendments to H.R. 7020. Should this bill become law, its implementation and its possible future amendment will be within the jurisdiction of the Committee on Public Works and Transportation as well as that of the other committees involved in H.R. 85 and H.R. 7020. Although I will not be here, I am confident that the Public Works Committee will play a leading role in correcting the deficiencies of this bill should it pass, and in developing comprehensive new legislation should it not.

Mr. FLORIO. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. GIBBONS).

Mr. GIBBONS. Mr. Speaker, I only speak for myself. I do not purport to speak for the Committee on Ways and Means, because as far as I know, the Committee on Ways and Means has taken no formal position on this particular bill as it now stands.

I am not happy with this bill, but I would be far sadder if we did not pass it. We must begin. We must start. We have been working on this problem for 6 years, and the problem gets worse every day, and we have only got 2 days left in this legislative session.

I think every Member of this House who has had to deal with the Senate in the last days knows the interminable number of traps one can fall into.

I have got a little old bill over there that just helps a widow, and I cannot get it out of the place. It is not controversial. But one Member can hold up anything in the Senate and they will.

Certainly if this bill goes back, it will never see the light of day. I say to this body, from my own practical experience, this is not a full loaf, but let us take what we can get and go now on to something that needs to be done. If the amendments are simple, as my

good friend from North Carolina says, we can certainly take them up and pass them very hurriedly next year.

I am sure that our committee, the Committee on Ways and Means, who will be interested in fiscal responsibility, will look at any problems that may exist in the trust fund, but let us not turn it down because it is not perfect. We need to start. We need to start now. There really is no excuse of not going ahead.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. GIBBONS. I yield to the gentleman from Minnesota.

(Mr. VENTO asked and was given permission to revise and extend his remarks.)

Mr. VENTO. Mr. Speaker, I would like to take this opportunity to comment on the recent Senate approved $1.6 billion compromise version of the superfund bill, S. 1480, which is designed to clean up our environment from past improperly disposed of toxic wastes and to prevent recurring incidents of this nature in the future.

Although S. 1480 does not include coverage of oil spill clean ups, and I am not particularly pleased with the bill as it stands, I believe it is of extreme importance that we tackle this problem as quickly as possible and seriously consider the compromise at hand. The number of abandoned and inactive hazardous waste disposal sites surfacing each day pose an immediate and extreme danger to the public health and environment. Several very threatening incidents recently discovered in the State I represent are examples of this insidious problem. They include the areas of St. Louis Park, Spring Valley, Oakdale, and New Brighton, Minn., not to mention all those sites that have yet to be discovered.

These areas located close to and in my district, have raised serious questions and pose severe ground water contamination problems. In St. Louis Park, municipal water supplies have been contaminated by creosote, forcing the city to close a major city well. Toxic solvent traces believed to be from an abandoned chemical dump seeped into two private Oakdale wells. In a Spring Valley landfill, a Wisconsin company has been dumping toxic liquids believed to be trichloroethane and percloroethylene, both known to be extremely toxic and potential carcinogens. And in New Brighton, several wells have been tested for suspected chemical seepage. Even though these incidents appear to be less serious than the problems of New York's Love Canal, they add to the growing incidents of hazardous waste contamination that are unknown and surface daily throughout the country.

We must take immediate action to protect the public from further exposure to these toxic wastes. Delaying the passage of the compromise legislation will only prolong the overall danger that the public has been exposed to already. While the Congress has missed building an overall framework to deal with toxic wastes, this measure is a step in what looms as a tougher fight in future Congresses to address the total problem adequately.

I urge my colleagues to join me in supporting this compromise legislation so that we can begin the task of cleaning up some environmental hot spots without delay and protect the American people from further exposure to toxic waste substances, and am hopeful that a priority of the 97th Congress will be legislation to strenghten the measure we are now considering.

Mr. BROYHILL. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. CONABLE).

(Mr. CONABLE asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, I fear that we have gotten out of the area of hazardous waste and into the area of hazardous legislation.

I regret that we find ourselves in this position. I think it is most unfortunate. I am not here to talk about the many hazards in this bill, but I would like to talk about some that we have had some experience with in the Committee on Ways and Means. I do not speak for the Committee on Ways and Means incidentally either, but as an individual.

The flaw I am talking about is the creation of still another new tax [Sec. 231] and another new trust fund and a wide-open trust fund at that, called the post-closure liability fund [Sec. 232].

The postclosure liability fund is designed to shift the responsibility for the long-term maintenance of hazardous waste disposal sites from the private operator to the Federal Government. It makes the Federal Government the guarantor of the site's future upkeep [Sec. 107(k)].

The postclosure liability fund is very similar to the Pension Benefit Guaranty Corporation which many of the Members here on the floor are familiar with. It provided for a Federal guarantee that private pension benefits would be paid if the private employer becomes insolvent.

The Members may recall the terrible time we had with the multiemployer pension plans under those circumstances. That particular proposal was, may I say, advanced by the same Senator in the other body that this proposal is advanced by.

The PBGC has been fraught with problems since its beginning, and the future will only bring more of the same.

It is my understanding that the postclosure liability fund was hastily adopted by the other body on the floor without the benefit of full committee debate and markup. Even with the best intentions, I do not believe such a dramatic new program could be fully thought out and drafted in such a short time. The Congress has acted hastily before and lived to regret it. I believe the postclosure liability fund would haunt us for years to come. Passage now will be followed by years of rewriting and tinkering. It may take until 5 years from now before some EPA administrative law judge tells us what we did today.

That fund can be used to pay out claims under this law or any other State or Federal law [Sec. 111(j)].

Now, if that is not an open-ended trust fund, I never heard one. I do not see the virtue in committing the Federal Government to a major new responsibility without knowing what we are getting into. Although the level of the excise tax has initial limits, the potential liabilities are without limit.

Next, it appears the range of substances and sites covered are open-ended. I hope we will seriously consider rejecting this measure.

[NOTE.—The following portion of the debate beginning with Mr. FLORIO's yielding and ending with Mr. FISHER's final remarks was printed in the Extensions of Remarks, CONGRESSIONAL RECORD, Dec. 5, 1980, pp. E5334–E5335.]

HAZARDOUS WASTE CONTAINMENT ACT OF 1980

SPEECH OF

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 5, 1980

Mr. FLORIO. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. FISHER), a member of the Committee on Ways and Means.

Mr. GORE. Mr. Speaker, will the gentleman yield?

Mr. FISHER. I yield to the gentleman from Tennessee.

Mr. GORE. Very briefly, in response to the last speaker, this provision, this fund that was discussed, is sunsetted out in 5 years. It disappears under a sunset provision unless it is renewed in 5 years. There can be no claim on it for at least 7 years.

So, if there is indeed a problem, which we do not think there is, there is ample time to take care of it before any claims are filed.

Mr. FLORIO. Mr. Speaker, will the gentleman yield?

Mr. FISHER. I yield to the gentleman from New Jersey.

Mr. FLORIO. To supplement the comments, the provision the Senate put in does not take effect for 3 years. The first penny will not be raised for 3 years. It is ample time for all the committees to look at this, modify, and that is this committee's intention to do that [Sec. 231].

I thank the gentleman for yielding.

Mr. CONABLE. Mr. Speaker, will the gentleman yield?

Mr. FISHER. I yield to the gentleman from New York.

Mr. CONABLE. Let me say the liability is unlimited, and if it is not going to take effect for 3 years, then we have 3 years to write it also.

Mr. GORE. If the gentleman will yield further, we do not even start to raise the funds for 3 years. No liability attaches for at least 7 years, and it disappears under a sunset unless it is renewed in 5 years. The problem with the gentleman's argument is that there is a great deal of uncertainty about what kind of bill, if any, can be passed in the next Senate.

Mr. FISHER. Mr. Speaker, if I may reclaim my time, this recent colloquy has been useful. The fact of the matter is that there are some financial provisions in this bill that are not as perfectly designed as we would like, and this is one of them. But it is not a fatal flaw, and it in no way overcomes the social disability, the individual necessity for beginning the program.

Now this bill is certainly not perfect. The oilspill provision should be included. The fund is probably not large enough. The financial provisions as we have just been talking about are not tightly drawn. The administrative problems will have to be worked out in many instances.

The SPEAKER pro tempore. The time of the gentleman from Virginia (Mr. FISHER) has expired.

Mr. FLORIO. Mr. Speaker, I yield 1 additional minute to the gentleman from Virginia.

Mr. FISHER. But offsetting these admitted deficiencies, there are very major benefits, and let me cite a few of them.

□ 1730

People are demanding action along this line. Make no mistake about it. They want protection against the ravages and the uncertainties of toxic materials that have been deposited in 1,000 places all around the country.

Government, that is we, have a profound obligation to create some means for dealing with these problems and to improve them as we go along. These are the problems of toxic waste that were disposed of years ago and were not known to be all that toxic.

There are problems of chemical spills in the future. We do have a profound obligation to get on with something here.

Industry will pay for seven-eighths of the cost of this, 87½ percent **[Secs. 221(b) and 303]**. Much of this can later be recovered through legal suits.

Therefore, this program does not overload the budget.

The SPEAKER pro tempore. The time of the gentleman from Virginia has expired.

Mr. FLORIO. Mr. Speaker, I yield 30 additional seconds to the gentleman from Virginia.

Mr. FISHER. Most important of all, we will be saying to 225 million people in this country that we are underway, that we are not powerless, hamstrung, bound up in our own routines to the point where we cannot do what we know has got to be done. We will be asserting leadership, that people have a right to expect and we will be taking, believe me, a constructive initiative and as we go along we will improve it, I know. If we do not act now to provide this start, we will, indeed, lose an opportunity, a marvelous opportunity, to tell our people that we are not without some leadership, some resource for dealing with one of the major problems of our time.

[From the Congressional Record, Dec. 3, 1980—Continued]

Mr. BROYHILL. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. JENKINS).

(Mr. JENKINS asked and was given permission to revise and extend his remarks.)

Mr. JENKINS. Mr. Speaker, when I hear all of the opponents of this legislation say that they must apologize, in effect, for supporting it, it raises a red flag. It seems that every single proponent, almost, of this legislation has to apologize for supporting it, because of the defects within it.

All of us in this body, practically all of us, have supported a very strong piece of legislation in the past.

Now, I want to follow through on the cautionary measures that my colleague, the gentleman from New York (Mr. CONABLE), mentioned a few moments ago. We have in this bill with the creation of this new trust fund an unknown **[Sec. 232]**. We do not know down

the road how much liability we are really shifting to the Federal Government [Sec. 107(k)]. We do not know what will really occur. It could be hundreds of millions or even billions of dollars. We are asked to go ahead and pass this legislation, come back next year and try to undo all these uncertainties in this bad piece of legislation.

So I agree with my colleagues who have supported this bill in the past that it is a total injustice, not only upon the Members of this body, but upon the American people to pass a bad piece of legislation simply because we are in a rush to judgment in the last three days of the session because of a very emotional issue.

I would hope that my colleagues would vote this down. Even if we have to come back next year and start again, I would rather do that than to support a piece of legislation that none of the Members of this body are totally familiar with the possibilities of the bad effects of it.

I would hope that my colleagues would vote against this bill. Hopefully, we can get some amendments that will be accepted.

Mr. BROYHILL. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana (Mr. MOORE).

(Mr. MOORE asked and was given permission to revise and extend his remarks.)

Mr. MOORE. Mr. Speaker, this is my first lameduck session and if we are going to handle legislation like this, I hope it is the last one I ever see. Here is a major piece of legislation that four committees of the House have worked on being brought up under a suspension of the rules, a piece of legislation that has numerous problems with it. An analysis done by 2 committees in this House, which I have in my hand, shows some 22 separate noncontroversial but significant problems with this bill.

I am one that supported this bill in the Committee on Ways and Means, I supported it on the House floor and would support this bill today with the amendments that the gentleman from New Jersey (Mr. FLORIO) has in his possession, I have been part of an effort for the last 2 days to draw those amendments which we believe are acceptable to the other body and correct these problems.

We are being told we have to have this bill today, even though it has all these problems in it. Even though the Republic has done without it for over some 200 years, we cannot wait 2 months. We have to have this bill fraught with all the problems it has in it. I do not think that is true.

You ought to be aware that the procedure of defeating this bill on suspension does not preclude further consideration. The gentleman from New Jersey can turn right around and bring the bill back up with these amendments later today. We can pass these amendments, send it on to the Senate and they can pass it and it can become law like it should.

I do not believe we ought to vote for legislation in the closing hours, being told this is our last chance and pass bad legislation, hoping we can correct it later. Many a mistake is on the books today that we have lived to regret by that kind of thinking. We are abdicating our responsibility as legislators when we legislate in that fashion.

I am on the Committee on Ways and Means. Let me point out one specific problem. This tax in this post-closure trust fund, subtitle (c) of this bill is $2.13 per dry weight ton of hazardous wastes. I ask, is this tax too high? Nobody knows. Is this tax too low? Nobody knows [Sec. 231].

What is the economic impact of this tax? Nobody knows.

The SPEAKER pro tempore. The time of the gentleman from Louisiana has expired.

Mr. BROYHILL. Mr. Speaker, I yield 1 additional minute to the gentleman.

Mr. MOORE. Is this tax going to be passed on to the consumer? Nobody knows.

Is it inflationary? Nobody knows.

That is not the way to pass a new tax. You do not pass it in the form of a Senate amendment on the Senate floor with no committee of either House passing such a tax. That is not responsible legislation.

I believe this tax probably is unreasonable in its amount. We either are collecting too much money or quite probably too little money from the tax which will result in too much being paid out of the Treasury to cover the claims of the fund.

I believe it is inflationary. I think it may have economic problems.

If there was one message in the November 4th election, I think it is that the people want us to be a little bit more careful with new funds, new programs, and new taxes.

So I urge that we defeat the bill today on suspension, turn right around and pass the bill with the perfecting amendments that all the committees of the House have approved, send the bill to the Senate so we can have a good bill.

Mr. FLORIO. Mr. Speaker, I yield 1½ minutes to the gentleman from New York (Mr. BIAGGI).

(Mr. BIAGGI asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, sometimes situations arise in which there are no good solutions—only unsatisfactory ones. I think this is such a situation.

This situation was caused by the action of the other body in sending us their version of this bill on a take-it-or-leave-it basis. In my view that type of high-handed action is an insult to this House and a perversion of the legislative process.

If we accept the Senate's ultimatum and pass the bill without amendment we would be encouraging that type of conduct on the part of the Senate. Further, we would be accepting a bill that is considerably less than what the House voted for when it passed H.R. 7020 and H.R. 85.

On the other hand if we reject this bill or return it to the Senate with amendments, we run a very real risk that no bill will be enacted this session.

Faced with these two unhappy choices, I have reluctantly concluded that we should not run the risk of losing the bill. I will therefore support the motion made by my good friend from New Jersey [Sec. 101(14)].

I think the Members of this House can understand the difficulty of my decision and the frustration I feel in the omission of an oilspill title from the bill. The committee of which I am a member has been working on a comprehensive oilspill bill for the last three Congresses. Oilspill bills were passed by both Houses in the last Congress. The subject has thus been fully and carefully considered. The oilspill title in H.R. 85 was developed by three committees in the House. Every conceivable interested party has had a chance to scrutinize it and comment on it. In brief, it is a fully developed, carefully crafted piece of legislation that is ready to go now.

The reasons why there is no oilspill title in this bill are complex. Part of the reason is the insistence by the administration and others that oilspill legislation be combined with legislation addressing two other areas of concern: Spills of hazardous substances, and dump sites. Though I have long felt that those subjects should be handled separately, the three areas of concern became joined in two bills this session. H.R. 85 addressed spills of oil and of hazardous substances. H.R. 7020 addressed hazardous waste dump sites. Taken together these bills constituted a comprehensive and responsible program to deal with these problems.

In its action on these two bills the Senate took the hazardous substances spill provisions from H.R. 85, watered them down, and combined them with the waste site provisions from H.R. 7020. No action was taken on the oilspill provisions of H.R. 85. The result is the bill before us today—a superfund bill that is considerably less than super.

I have been unable to find any substantial reason why the Senate did not act on the oilspill title of H.R. 85. There seemed to be no particular opposition to it. It apparently just got lost in the shuffle while the Senate concentrated on what appeared to be the more serious problem of hazardous substances.

I have been assured by responsible Members of the other body that they are sympathetic to the need for comprehensive oilspill legislation and will address it early in the next session. I hope that they will do so since the need for oilspill legislation is urgent.

While I very much wish that an oilspill title were part of this bill, I am forced to recognize the reality that faces us. I also recognize the position of the gentleman from New Jersey. He has worked hard and long for this bill as I have worked hard—and longer—for an oilspill bill. He has done a good job and has been cooperative with me and the Merchant Marine Committee at all times. He bears no part of the blame for the lack of an oilspill title in this bill.

As I see it, H.R. 7020 is not a bad bill—it is just an incomplete one. But it is a first step in addressing a serious problem. It is my earnest hope that we can take the next steps early in the next Congress.

□ 1740

This is multifaceted. At least with this legislation we will be dealing with a portion of it. The oil represents 80 percent of the total problem, so my colleagues can picture the impact this legislation has and just what the omission consists of.

Mr. BROYHILL. Mr. Speaker, I yield 3 minutes to the gentleman from Kentucky (Mr. SNYDER).

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Speaker, there is a reasonable doubt that this legislation will pass, if it is to be without amendment, so that it can be cleared for the President. Those who support the approach of not amending the bill do so on the basis that the Senate will be unable to hold a coalition together to support superfund beyond what they have already sent over as an amendment to H.R. 7020. I have received phone calls from Members of the Senate saying that the Senate will be unable to accept any amendment, especially one adding oil to the superfund package. The administration has similarly conveyed that view to me and yesterday we received a letter from the Senate stating that they could not even pass the bill they did if it were considered today. Although this is "not an ultimatum," an objective reading of this statement leads me to the opposite view.

Mr. Speaker, not only did I support H.R. 7020 when it first passed the House, I was the minority floor manager for H.R. 85—the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act—from two committees, the Public Works and Transportation Committee and the Merchant Marine and Fisheries Committee. Those bills were necessary and good. The gentleman from New Jersey's view is that this version is identical to the House passed H.R. 7020. It is not. He even stated that the Senate added H.R. 85's amendments to the Clean Water Act dealing with hazardous spills into navigable water—but he did not mention that they dropped H.R. 85's third party damages—the provisions that help people. People have been left out of the bill before us today. Only things are covered.

I would hope that all Members would take a moment to analyze this legislation. It is a bad bill. It is poorly drafted, but more importantly it contains much too broad a grant of discretionary power from the Congress to the Executive. Any Member concerned about writing laws which allow the Executive, and especially EPA, to do whatever they please should be outraged at this measure.

Before we vote to send this bill to the President, we should honestly recognize some of the things it does not do. It does not provide long-term assistance to people who are injured in incidents such as Love Canal and Valley of the Drums. It does not provide economic assistance to help them purchase new residences if they are forced to leave their homes because of the discovery of toxic contamination nearby.

It does not help people suffering personal injury from similar incidents. Neither does it provide assistance to fishermen whose livelihood is destroyed by contamination of the waters or other businessmen who suffer adverse economic consequences directly as a result of these hazardous waste incidents.

Also, the language could be construed to allow EPA to use the trust fund money that is supposed to be used for cleanup, to go out and hire as many people as they want to, without ever telling Congress without ever consulting with the Appropriations Committee [Sec. 111].

I want to also tell my colleagues that this bill sets up a new agency for toxic substances and disease registry, a new agency that we do not really know too much about, except we do know that the Center for Disease Control in Atlanta could do everything the Senate wants done with this new agency [Sec. 104(i)].

The liability coverages are totally inadequate [Sec. 107]. They do not take care of people. They take care of cleanup and damages to natural resources and, as a consequence of that, the Federal preemption provision is deficient [Sec. 114]. If there is one good reason for a good bill, it is for Federal preemption so that a carrier going across many States, a railroad, a truck, or a barge line, does not have to deal with 10 or 15 funds. Now with the passage of this bill they are going to have to deal with one fund for every 50 States as well as the Federal fund.

In addition to these problems one of the most glaring deficiencies in this legislation is the absence of any coverage for oilspills. Now as the Members may recall, on September 19 this body approved, on a record vote of 288 to 11, H.R. 85, a bill providing a comprehensive liability and compensation program for oil and hazardous substance spills into the navigable waters. While the Senate has returned to us our hazardous substance spill program in their amendments, they did not include the oil portion of H.R. 85 when they amended H.R. 7020.

So, for the second Congress in a row the Senate has effectively killed oilspill legislation. They did it in 1978 when we passed an oilspill bill, and they did it then supposedly because we did not include a hazardous program. At that time, as Members will recall, the hazardous issue was just beginning to surface and had not been considered by any House committee. Notwithstanding that, the Senate killed the oilspill bill that year in order to keep the House interested in superfund legislation.

Now this year they send us superfund legislation which does not address all of the problems even though there is wide support for an oilspill title. And today the managers of this bill are asking you to concur in that action. Yes, the Senate has committed to early consideration of oil legislation in the next session. But they did that in 1977 and put that statement in the conference report on the Clean Water Act—an empty promise. I hope when the Members vote on this bill they will remember that for the last 6 years, 6 years I repeat, we have been trying to get compensation for damages for oil pollution and you are voting to continue the status quo which is no compensation for the citizens of this country who suffer the devastation of an oilspill.

I will not repeat here in the time I have available the justification for this. It is adequately covered in the RECORD of September 18 and 19. But I would remind you that approximately 500 oilspills occur every year according to testimony received before the Committee on Public Works and Transportation, and we are closing our eyes to that problem.

Over the last few days, I have attempted to work with other Members to develop an amendment to H.R. 7020 to restore the oil provisions to the superfund process. I also hoped to correct some of the more glaring errors in the Senate's bill resulting from its broad treatment of very complicated issues. I must say there is a great

amount of support in the Public Works Committee and Merchant Marine Committee for this concept. But today that approach is precluded by the parliamentary procedure being utilized to consider this legislation.

My approach would have been to add all of the provisions from H.R. 85 relating to oil but stay within the $1.6 billion limit imposed by the Senate for the superfund package and to add four minor amendments dealing with limiting the use of the fund for administrative costs, promoting equity in intermodal liability, tightening the one pound release language, and transferring the new disease registry agency functions to an existing agency.

These minimal but basic changes would, in my opinion, greatly improve this legislation. Notwithstanding other comments, I believe that these amendments would be acceptable in the Senate, I have talked to opponents of the superfund legislation in that body and have been informed that they would not object to including oil in this bill or to the other amendments. Therefore, I can only conclude that it is the supporters of superfund that will kill the legislation if oil is added. I think the record should clearly note this fact because when there is another oilspill there will be a lot of discussion on who is responsible for failure on the part of the Congress to protect the welfare of our citizens.

Further, this bill was drawn without any consultation with the legislative counsel. Our legislative counsel briefly looked at this bill and found 45 technical errors, 45 in this one bill. There is no telling how many he could find if he got to study it a little bit, because it is a comprehensive bill.

Mr. Speaker, I would also reemphasize for the record, that as I noted earlier, Chairman FLORIO of the Transportation and Commerce Subcommittee stated that H.R. 7020 has been sent back to us by the Senate with sites legislation and the hazardous spills portion of H.R. 85, which we passed 2½ months ago. Regrettably, it does not include the oilspill portion of H.R. 85.

While, on its face, the bill before us technically amends the Solid Waste Disposal Act, it also substantially touches on the Federal Water Pollution Control Act and, as a result, deals with much that is within the exclusive jurisdiction of the Committee on Public Works and Transportation. For example, the bill that is before us here today specifically references the Federal Water Pollution Control Act no less than 33 times. In addition, it defines the terms "hazardous substances" and "liability" by reference to the FWPCA.

These are terms which appear in virtually every section and on every page of the bill and are absolutely fundamental to the bill's operation. Thus, when we are forced to begin correcting the numerous substantive and technical problems that abound in this bill—as I am convinced we will be required to do at the beginning of the 97th Congress—the Public Works and Transportation and Interstate and Foreign Commerce Committees will have to work closely with the Merchant Marine and Fisheries and Ways and Means Committees if we are to fashion legislation that more adequately addresses the problem of hazardous substances and oil pollution of the environment.

In conclusion, Mr. Speaker, I will vote to defeat this process not because of the objective but because this bill does not do what our citizens want it to do—it does not help people. We can write a bill to do it—today—now. Let us do it and let us work to get the Senate to do what they know is right. This bill, once everyone knows exactly what it does, will be recognized as deficient, weak, and a nonsolution. We took a strong stand for a solution by passing H.R. 85 and the House version of H.R. 7020, let us not walk away from that now.

Mr. FLORIO. Mr. Speaker, I yield 1 minute to a very important member of our subcommittee, the gentlewoman from Maryland (Ms. MIKULSKI).

(Ms. MIKULSKI asked and was given permission to revise and extend her remarks.)

Ms. MIKULSKI. Mr. Speaker, I would like to take this opportunity to urge the expeditious passage of the Senate version of the Hazardous Waste Containment Act of 1980. The Senate bill is substantially similar to the House measure, with the exception that there is no oil title.

I realize that it is disappointing to see no oil-related provision in the bill, but we must also realize that this is our only chance to get hazardous waste dump site cleanup legislation enacted. I would like to note that we have had assurances from Members of the Senate that an oilspill proposal would be considered a very high legislative priority in the 97th Congress.

Moreover, there is already a mechanism in place that is designed to deal with spills in navigable waterways. There is not, however, any provision currently in our law that addresses the potentially ruinous situation of abandoned toxic waste dump sites.

I, therefore, believe that it is imperative that we pass the Senate bill as a very important beginning in our attempt to defuse the ticking environmental time bomb of abandoned toxic waste sites.

Mr. BROYHILL. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. JOHNSON).

(Mr. JOHNSON of California asked and was given permission to revise and extend his remarks.)

Mr. JOHNSON of California. Mr. Speaker, speaking for the Committee on Public Works and Transportation, we have had this matter under consideration for the last 6 years. We thought we worked very closely with the other committees of the House having jurisdiction in putting H.R. 85 together, and also supporting H.R. 7020 when it left the House.

Those were substantial votes that were taken in the House of Representatives. Very few people were in opposition to it. The bills moved over to the other body in due time. They have had them for some time.

But the bill that has come back from the other body has totally disregarded H.R. 85 as far as the oil spills are concerned, and the provisions of that bill dealing with section 404. I would say that my colleagues will probably never get a better bill put together than was put together in H.R. 85 and H.R. 7020 as it left the House and moved to the other body.

I certainly regret the actitivities that took place in the other body when they amended the bill, H.R. 7020 and sent it back to us

and said "This is the last word, this is the bill you have to take." My colleagues have heard many speakers get on the floor here today and talk about the provisions that are found in H.R. 7020 at the present time as being inadequate, hurriedly put together, and certainly not doing the thorough job that H.R. 85 and H.R. 7020 did when they left the House for the other body and its consideration. I ask that the House vote down the bill, H.R. 7020, on suspension.

Mr. FLORIO. Mr. Speaker, I yield 1 minute and 30 seconds to the gentleman from North Carolina (Mr. MARTIN).

(Mr. MARTIN asked and was given permission to revise and extend his remarks.)

Mr. MARTIN. Mr. Speaker, I would like to ask unanimous consent to speak from the Republican side in support of the conference report on H.R. 7020, a bill to provide a funding mechanism for cleaning up hazardous chemical dump sites and chemical spills on navigable waters. Earlier this legislation passed with overwhelming support; which now has turned to underwhelming.

There are several reasons for this and they have been thoroughly documented over the last hour. I share some of the reservations that have been expressed.

Nevertheless it seems to me that the more urgently responsible strategy, with the time running out, is to adopt this measure now while it has freshly escaped with barely adequate support in the other body, and then to work with the commitments that have been made and for which I have just had the reassurances from the gentleman from New Jersey (Mr. FLORIO) as well as the Senator from Vermont and others to remedy the oversights early in the next Congress, for which there will be plenty of time.

□ 1750

These abandoned orphaned collections of unlabeled crud are not going to go away by themselves. They will not clear themselves up. All they will do is seep slowly into the rest of our water supply while we go on recess. I regret this legislation is not prefect. Had we not taken so long in getting it through our deliberative processes, there might have yet been time to consider perfection; yet if we insist on changing it now with no time left to the Senate for concurrence, then the issue self-destructs before our very eyes. So yes, we must vote "aye."

Mr. BROYHILL. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DANNEMEYER).

(Mr. DANNEMEYER asked and was given permission to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, the safest thing for me to do politically right now would be to sit here and say nothing and I suspect the same holds true for most other Members. No one wants to be accused of voting for hazardous wastes but, just because there is a hazardous waste bill on the floor for consideration that does not mean that it is a good bill, or even a tolerable bill. Regrettably, H.R. 7020 is neither.

When superfund started out in the Commerce Committee, it started out as a $600 million bill. Then the Ways and Means Committee passed a $1.2 billion version of the measure and the House

went along with the Ways and Means Committee at least insofar as the money was concerned. Now, the Senate has passed a $1.6 billion measure and, if we concur, the one thing we can be sure of is that the program will eventually cost two or three times that. If we were enjoying budget surplus, perhaps that would not matter so much but, instead of moving toward the black in the months this bill has been under consideration, we have moved deeper in the red.

Admittedly, the $1.6 billion is supposed to go for chemical spills as well as hazardous waste cleanup, but since the version we are about to vote on is broader than the House-passed version of the bill, it may well take the whole $1.6 billion and then some just to clean up the hazardous waste sites. In short, instead of scaling down our aspirations to meet our reduced financial circumstances, we have done just the opposite. And that is something our current 12.6 percent annualized inflation rate tells us we cannot afford.

If there were no other way to attack the hazardous waste problem except through EPA, perhaps a case could still be made for this bill. After all, no one is arguing that the waste sites should not be cleaned up. But, to assume that only EPA can do the job, or do it best and quickest as this bill assumes, flies in the face of historical experience. Since when did a Federal regulatory agency ever move quickly on a problem, to wit RCRA, or solve it efficaciously, to wit air and water pollution?

And who is to say that State or local government, or even private enterprise, could not do the job in a manner more consistent with the wishes of the local citizenry? As a matter of fact, down in the Houston area, the responsible government agency—local—went so far as to solicit bids for the construction and operation of a hazardous waste facility that could dispose of wastes from inactive as well as active sites, and found no less than 11 private firms willing to build and operate such a facility at no cost to the taxpayers. That being the case, there is every reason to believe that "no cost to the taxpayer" contracts for disposal of active and inactive wastes could be negotiated by almost any number of interested communities.

I might also note, from experience in my own district, that there are other means of recourse available to people and governments near a hazardous waste site. For instance, in California we have a law requiring the abating of a public nuisance, the likes of which might be used to effect a cleanup by either the owner of the site or the outfit responsible for the dumping in the first place. Also, it may be that State government would be able to handle the problem, which suggests that the block grant to States approach, as suggested by our distinguished colleague from Michigan (Mr. STOCKMAN) would be preferable to this measure. And there may well be other options, depending on State and local laws and circumstances.

In short, the Federal taxpayer should be the court of last resort, not the first line of defense, when it comes to hazardous waste disposal. If it is the other way around, a lot of people will be let off the hook that should not be and a lot of money may be wasted that could be saved.

Mr. Speaker, one last point. These are the closing days of the 96th Congress. Everyone wants to go home. A new administration is coming in which may have its own ideas as to how to handle the problem. In short, this is not the best time, nor is the suspension procedure the best way, to initiate a program that will have far-reaching consequences. As the old saying goes "haste makes waste" and waste is precisely what we are trying to get rid of.

Mr. FLORIO. Mr. Speaker, I think it would be appropriate at this time to yield 1 minute to the gentleman from Texas (Mr. ECKHARDT).

Mr. EDGAR. Mr. Speaker, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Pennsylvania.

(Mr. EDGAR asked and was given permission to revise and extend his remarks.)

Mr. EDGAR. Mr. Speaker, I rise in support of the Senate-passed superfund bill.

Although I share the concerns of some of my colleagues on the Public Works Committee regarding the process by which we consider this legislation today, I must urge all Members to consider the urgent need for legislation in this Congress. The problem of toxics in the environment is not a new one and, unfortunately, Congress has often provided legislative responses on an ad hoc basis. We have enacted provisions in the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, and the Pesticides Act to address the most prominent problems at the time. None of these acts provided the entire solution. Many Members feel that this legislation is no different. However, almost every Member acknowledges the need to provide immediate authority to address the serious hazardous substances release problems which are not dealt with under current law.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 meets many of these essential needs by insuring that immediate notice of a hazardous substances release is provided by the response center [Sec. 103(3)]; that broad authority exists to respond and clean up such releases regardless of the source of the release; and that sufficient authority exists for remedial action that insures the protection of public health and welfare [Sec. 104]. Most importantly, the bill, if passed now, would create a system of financing, based on industry fees, that will insure a minimum level of funds will be available to address at least the most serious problems that are known to exist [Sec. 211].

As we all know, tremendous public concern exists regarding the disposal of hazardous wastes and hazardous substances spills. A survey conducted for CEQ in March 1980 found that 64 percent of those polled were concerned a great deal about the disposal of hazardous industrial chemical wastes. Approximately 60 percent said they would not accept the siting of a hazardous waste facility within 50 miles of their home even if it would be built and operated according to Government environmental and safety regulations. And one cannot wonder at this great public concern.

In my State, hazardous substances problems have been discovered at an alarming rate in recent years. In the summer of 1979, an oil slick appeared on the Susquehanna River near Pittston, Pa. When EPA officials responded under section 311 of the Clean

Water Act, they learned that the slick contained a variety of highly poisonous chemicals in addition to the oil. The slick was found to be emanating from an old coal mine shaft. The chemicals derived from wastes trucked to Pittston from all over the northeast where they were poured into ventilating shafts in a mine more than 3 miles from the river's edge.

Officials estimate that more than 300,000 gallons of acids, cyanide compounds, industrial solvents, waste oil and other chemicals remain at this site where they could be washed to the surface anywhere in a 10-square-mile surface. For a time, intense concern was created among residents that they might be exposed to deadly cyanide gas which might seep back to the surface through various ventilating shafts.

The House Committee on Government Operations recently published an "Interim Report on Groundwater Contamination" that revealed a recent EPA survey found 585 unmonitored industrial waste impoundments in Pennsylvania alone. Approximately 78 of these sites contain potentially hazardous wastes, are unlined, and lie directly above groundwater. At least 20 of this latter category of impoundments are located within 1 mile of an actual or potential water supply well.

Numerous instances of well contamination from trichloroethylene (TCE) and other chemical waste releases have been reported throughout Pennsylvania.

For example, several families in Rahns, Pa., have been suffering from blurred visions, headaches and violent intestinal cramps—all symptoms of chemical poisoning for several years. Finally, last year, their wells were closed when excess levels of TCE were found to be present. Yet, many families have a difficult time obtaining a timely response to suspected contamination incidents simply because the resources to take the necessary precautions to protect public health have not been available.

Finally, Pennsylvania became almost famous as a haven for "midnight dumpers" who have trucked wastes from all over the Eastern seaboard and dumped them illegally at various sites through the State. While new EPA regulations as well as new State legislation will largely abate this problem in the future, we are still faced with the continuing problem that existing sites pose to public health and the environment.

Mr. Speaker, these few examples of but many hazardous substances release problems in Pennsylvania indicate a serious problem that we can not delay in addressing. This body must demonstrate that it can respond to serious threats to public health and respond in a timely fashion. We can ill afford to endlessly negotiate until the perfect legislation has been crafted. Failure to pass superfund legislation in this Congress will guarantee a minimum 1-year delay of effective action by the time we pass legislation next year, EPA regulations are written, and industry completes its court challenges to such regulations. We must launch the process now, and seek to perfect it later. I urge my colleagues to pass the Senate bill without amendments.

Mr. ECKHARDT. Mr. Speaker, I support the bill. I recognize, as others have said, that the bill does not do everything that should be done. There are two problems. There is the problem of cleaning

up hazardous wastes, which I think is the more important problem. There is the problem of dealing with oil spills which is also important but not as emergent. The argument that has been made here has been the argument that if we cannot do both, we should do neither. I say to you that unless we move on this swell of tide to deal with the question of hazardous wastes today, it is not that we will do it 3 months from now, it may be that we will not do it for 7 years from now.

I want briefly, though, to answer one of the statements made by the previous speaker about the Harris County, Tex., situation.

The SPEAKER pro tempore. The time of the gentleman from Pennsylvania has expired.

Mr. EDGAR. Mr. Speaker, I yield 30 additional seconds to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Speaker, the problem is this: We do have an agency in Harris County that deals with responsible generators of hazardous wastes in future. We have no agency in Harris County to deal with irresponsible ones that have dumped hazardous wastes that constitute continuing time bombs, threatening our population and our water supply.

Mr. BROYHILL. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. PICKLE).

(Mr. PICKLE asked and was given permission to revise and extend his remarks.)

Mr. PICKLE. Mr. Speaker, I supported this superfund bill when it came out of the Committee on Ways and Means. I believe there is a definite need for it, and I supported many of the motions made by the gentleman from New York who did a very commendable job on it. I am for the creation of a fund that would provide for a cleanup of these kinds of spills.

I do not think, though, the bill we are voting on now is the same bill that came out of our committee, nor is it the same bill that came out of the Committee on Public Works and Transportation.

The gentleman from North Carolina referred to the fact that we should support this conference report. This is not a conference report. This is a bill passed by the Senate, a new bill. If we had gone to a conference—the members on the Committee on Ways and Means or the Committee on Public Works and Transportation—and had worked out our differences, or at least had some kind of card to come back with and offer a vote, you could make a choice.

But the other body simply passed a new bill and has brought it over here, and our leadership has said it can be presented to us on suspension. That is not proper procedure. It is not a conference report. I want to support this bill, but I think we ought to send it back and not pass it on suspension.

I do not like the fact that they have created a new trust fund that is openended. This post-closure liability trust fund is a far-reaching step. Now we have to be careful of that trust fund. We went as far as I think we should have in the Committee on Ways and Means' version. I do not like the fact that it excluded oil.

If we are going to clean up these spills, it ought to be for oil, too. I really think the best thing for us to do is not to approve this thing on suspension. Those of us who support the superfund hope that you can have a better bill that is more in line with what both

the members of the Committee on Public Works and Transportation and the Committee on Ways and Means had agreed to when it left this body. We ought to send this back, not pass it on suspension, and get the bill that we can be proud of and be happy with and can live with.

Mr. FLORIO. Mr. Speaker, I yield 30 seconds to the gentleman from Vermont (Mr. JEFFORDS).

(Mr. JEFFORDS asked and was given permission to revise and extend his remarks.)

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. Mr. Speaker, I yield to the gentleman from California (Mr. WAXMAN).

(Mr. WAXMAN asked and was given permission to revise and extend his remarks.)

Mr. WAXMAN. Mr. Speaker, while I support most of the provisions of this bill and certainly hope that this house will adopt both it and future legislation for the prevention and cleanup of toxic wastes, I do have a real concern about the lack of clarity of some of the language inserted by the Senate. In particular I am bothered by the provisions which create a new agency within the Public Health Service to deal with toxic substances **[Sec. 104(i)]**.

I would certainly hope that the Secretary, in creating such an agency, would do everything possible to avoid duplication and overlap with many of the programs of the Department of Health and Human Services which perform exactly these services that we are creating another agency to coordinate.

I would also understand, as the Senate staff has said and as I know to be my colleague from New Jersey's intent, that the Public Health Service is to be responsible for the provision of services under this bill only to the extent that it receives appropriations and that no one expects the PHS to revise or redirect its other programs to meet the new authorities given it under this bill.

I am reluctant in my support of the measures taken in dealing with health care in this legislation. Little focus and even less debate have produced these new programs. As many of the authorities of the Public Health Service Act come up for reauthorization before my subcommittee, I intend to devote much attention to the toxic waste programs already in place and to the additions we are making here today. In a studied and cautious proceeding, I am sure we can craft legislation which will coordinate rather than complicate our approaches to cleaning up these chemical dangers.

Mr. JEFFORDS. Mr. Speaker, the question very simply is, "now or more than a year from now?"

The people are not interested in technologies. They are interested in progress toward solving a serious national problem. No serious philosophical differences exist here, only technicalities. I sympathize with the authors in the House here. I admire their excellent work, but I sympathize more with the suffering citizens. Let us help the people now and take care of the technicalities later.

Tragic instances such as Love Canal and the Valley of the Drums which threaten public health and the environment are all too familiar. By far the most common and potentially serious damage resulting from these releases of hazardous waste is the contamination of groundwater. In examining just 128 incidents, the

Congressional Research Service found over 1,300 wells had been closed, affecting the water supplies of thousands of people. These situations have radically altered the long-held view that the Earth could always be utilized as a filter for wastes.

The need for an emergency Federal response to deal with abandoned waste sites and chemical spills is compelling and immediate. This House addressed this necessity by overwhelmingly passing H.R. 7020 and H.R. 85 last October. Although this version of the superfund legislation is somewhat weaker with regard to imposing liability, and does not provide for the compensation of victims of spills, it is broader in scope and does substantially address the problem of releases, of hazardous waste. While this version of superfund may not resolve all our concerns about releases of hazardous wastes, it represents significant progress and is deserving of our support.

The broader scope of this Senate version of superfund covers abandoned sites and spills. This may eliminate potential problems with a lack of a response while the nature of a release of hazardous substances is identified. By not limiting the cleanup applicability to particular types of releases greater flexibility can be provided to insure the cleanup of all releases which pose an imminent and substantial danger to public health or the environment. This version of H.R. 7020 envisions a 5-year fund of an estimated $1.6 billion. While this amount is somewhat larger than the House bill, it may be insufficient to cover the broader scope of the Senate version as quickly as we might desire.

As was contemplated in the previous House bills, this version places the costs of releases of hazardous waste on the sector most responsibile for pollution and which benefits most from chemical production rather than on the victim or taxpayers. By utilizing the revolving fund to clean up releases and compensate governments for the loss of natural resources, this bill creates the means for a timely response to crucial health and environmental problems. This bill would establish liability rules to govern payment into the fund by those persons responsible for causing the release of hazardous waste, replenishing the fund for future cleanup and resource compensation payments to governments.

For purposes of this bill, manufacture, use, transportation, treatment, storage, disposal and release of hazardous substances are ultrahazardous activities justifying the imposition of strict liability under the standards established by section 311(f) of the Clean Water Act [Sec. 101(32)]. I believe this provision is compatible with the express strict liability provisions previously included in the version of superfund passed by this House. I am pleased to note that the Senate version of the bill has retained some important provisions which I supported regarding a limitation on the scope to the intervening third party defense to strict liability [Sec. 107(b)(3)]. Although the Senate version does not contain the House language on the question of joint and several liability, the intent of the House provisions will largely be served through the prevailing common law rules relating to apportionment among defendants who are held jointly and severally liable. While other portions of the Senate bill could be improved, I believe these liability provi-

sions are appropriate to carry out the previously expressed intention of the House.

While this legislation may not be precisely what we had hoped for, it is certainly a compromise that all of us can live with. This legislation has involved much lengthy consideration by the House and Senate. Many compromises have resulted in a delicately balanced solution to some problems related to releases of hazardous waste. Some among us would desire that this legislation include provisions for oilspill cleanup, compensation for all forms of damage, or a larger fund so that these problems could be responded to more quickly. While I would certainly support some of these changes, I believe we must not disregard the progress which has been made in reaching this compromise. I urge the support of my colleagues for this timely solution to an immediate national problem.

Mr. FLORIO. Mr. Speaker, I yield 1 minute to my colleague, the gentleman from New Jersey (Mr. RINALDO).

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. RINALDO. I yield to the gentleman from New York (Mr. LENT).

(Mr. LENT asked and was given permission to revise and extend his remarks.)

Mr. LENT. Mr. Speaker, I thank the gentleman from New Jersey for his leadership in this.

Mr. Speaker, there is an urgent need for this body to adopt a superfund bill before this session ends. Seldom has there been such a worthwhile measure to pursue.

By all accounts, the problem of hazardous waste disposal in this Nation has reached frightening proportions. While new hazardous waste disposal facilities will be controlled under the Resource Conservation and Recovery Act, there is a gap in that law respecting the past disposal of chemical wastes. With new, potentially dangerous inactive hazardous waste sites being discovered daily, it is incumbent on us to enact legislation which will assist in the cleanup of these sites.

I am distressed that we now have so little time to resolve and agree on this vital measure. Months ago, my voice and others in this body were exhorting our colleagues in the other body to act quickly to report a superfund bill. Unfortunately the Senate got bogged down in attempting to include a broad-ranging redefinition of toxic tort law in its superfund bill. Only when faced with a do or die situation did the Senate finally act to pare its original measure down to an acceptable compromise.

Fortunately, we still have time to pass this landmark legislation. The bill which has been sent to us by the Senate is not a perfect bill—there are provisions which I would prefer to omit. However, in face of the limited time remaining for us to act, I believe minor differences between the House and Senate bills should be overlooked in the interests of providing a solution to one of the great problems of our time: The poisoning of our land and water.

Mr. Speaker, I have been a staunch supporter of the superfund legislation from the start. I worked closely with the key Commerce Committee sponsors of the superfund bill in developing a carefully

honed bipartisan compromise. That compromise provided the essential first step toward passage of this vital legislation.

I hope that today this House will assume the responsibility which it faces and report an acceptable superfund bill back to the Senate. No further delays should be tolerated. The sooner that this country can begin the cleanup of dangerous chemical releases, the better off we all will be.

Mr. RINALDO. Mr. Speaker, I rise in support of this very important legislation. I have listened to the arguments here. I will be the first to admit that there are problems with the bill, but I have also listened to the people very carefully on my side of the aisle, and there was not one person who got up and spoke who had an explosion in his district as I did with Chemical Control Corp. There is not one person who spoke who saw firemen and policemen injured, schools closed, factories shut down, citizens alarmed and frightened, and I do not think we can wait any longer. I think we have to pass this legislation today because in my view the existence of a Federal hazardous cleanup control fund could have helped to prevent the serious explosion and fire at the Chemical Control Corp. in Elizabeth, N.J. earlier this year.

Mr. FLORIO. Mr. Speaker, I yield 30 seconds to the gentleman from Pennsylvania (Mr. CLINGER).

(Mr. CLINGER asked and was given permission to revise and extend his remarks).

Mr. CLINGER. Mr. Speaker, I rise in support of this bill, flawed though it may be, because I am convinced that it is the last train that is going to leave the station in this session of Congress. I think it is absolutely incumbent that we be on that train. I have had personal experience with problems of this sort where I have had PCB's located over the main source of water supply of a community in my district, and there was no one—no one—who had any financial responsibility who could be called upon to assist in that problem.

The only fund—and I would point this out because it has not been brought out—there is at the present time a thing called pollution fund, section 311(k) of the water pollution fund. That is the only source of funding to correct problems of this sort.

□ 1800

Mr. BROYHILL. Mr. Speaker, I will yield myself 2 minutes.

Mr. Speaker, I ask that the Members vote "no" on this procedural question of passing this bill under suspension of the rules. We have a bill which everyone admits is flawed. I have already pointed out to the Members that I have in my hand a 3-page list of not only technical, but substantial problems that are contained in this bill. I have also pointed out in previous debate, and made a good faith offer to the gentleman from New Jersey (Mr. FLORIO) to work with him on amendments that would cure these defects and technical problems with this bill.

In fact, I hold in my hand a draft of the amendments that could be added to this bill and sent to the other body so that, if we are going to pass a program of this kind, it is going to be administratively workable. I just do not think that we want to pass a bill that has the problems in it that this bill has in it.

This bill would even go beyond the appropriations process. The EPA, as well as other Federal agencies, would be given almost unlimited access to the fund. The agencies would be able to fund administrative costs, overhead, other activities, without the normal safeguards that are provided by the appropriation process [Sec. 111].

These amendments would correct that problem, and I would strongly urge the Members to vote "no" so that we could add the amendments, and those of us on this side have offered our cooperation to the gentleman from New Jersey to accomplish that end.

Mr. FLORIO. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL. I will be happy to yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Speaker, as I have indicated to the gentleman, he has my commitment that in the next session—and I think I can speak for Senator STAFFORD—that these relatively technical problems will be solved.

The SPEAKER pro tempore. The time of the gentleman from North Carolina has expired.

Mr. FLORIO. Mr. Speaker, I yield 30 seconds to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the chairman for yielding. To those who are opposing this bill because they are philosophically opposed to the Federal Government moving in and imposing this kind of solution upon the private industry, just remind yourselves that about an hour ago you all voted for a bill of at least $2 to $3 billion to solve the nuclear waste problem. And just as the nuclear waste problem has unfortunately become the responsibility of the Federal Government, so has dealing with the chemical waste problem of this country. Without a Federal program that will go unresolved. The nuclear waste bill we just passed is not a final answer. It is a 1996 answer, at the earliest. This bill gives us the same kind of promise. It is not the full answer, but it is a beginning.

Mr. FLORIO. Mr. Speaker, I yield 30 seconds to the gentleman from New York (Mr. LAFALCE).

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Speaker, it is Wednesday night, December 3. We adjourn on December 5, this Friday. The time is now, or not maybe later. The time is now or never. We are considering a bill that was pronounced dead by the Senate minority leader after the election. He then resurrected that bill, and this bill before us today was basically written in the office of the Senate minority leader.

There is some misconception that this is a bad bill. It is not a bad bill. It is a good bill. It does not do everything we would want; it does not take care of oil spills, but it does deal with the problem of abandoned waste sites.

Mr. FLORIO. Mr. Speaker, I yield 30 seconds to the gentleman from Kentucky (Mr. CARTER).

(Mr. CARTER asked and was given permission to revise and extend his remarks.)

Mr. CARTER. Mr. Speaker, some years ago I included as an amendment in the Clean Drinking Water Act an authorization of $8 million to clean up the Love Canal near Louisville, Ky., and Jef-

ferson County, where hazardous waste material was present, and is still present.

Mr. Speaker, we have in the Valley of the Drums a serious problem. We know of the many miscarriages that have occurred up there. We know of the many serious physically deformed youngsters who have been born, and we want to end that.

Let us support this legislation.

Mr. FLORIO. Mr. Speaker, I would yield 30 seconds to the gentleman from Connecticut (Mr. MOFFETT).

Mr. MOFFETT. Mr. Speaker and colleagues, how many of these Love Canal ticking time bombs are going to have to go off and blow up in our faces before we act? We have the closest thing to a consensus on what the problem is, I think, that I have ever seen on any major issue since I have been in the House. We all agree it is a major problem. Our votes not too long ago showed that.

Let us not let that consensus be blown apart by flimsy excuses and petty procedural considerations and turf questions, and our unhappiness with the other body.

Mr. FLORIO. Mr. Speaker, I yield 30 seconds to the gentleman from Michigan (Mr. BRODHEAD).

Mr. BRODHEAD. Mr. Speaker, H.R. 7020 as modified by the Senate holds out the promise that the Nation's most severe public health problem will not be addressed. The improper disposal of hazardous materials has created toxic time bombs that are exploding or are threatening to explode across this country. The legislation to take an important first step toward addressing this problem can and must be sent to the President today.

H.R. 7020 recognizes two fundamental truths of the toxic threat that is before us. First, in the face of the understandable attention which a few sites such as the Love Canal have received, it recognizes that remedial action is necessary in nearly every State. My own State of Michigan has identified 268 sites where groundwater is known to have been contaminated by hazardous chemicals or other substances and 381 sites where such contamination is suspected. Inventories in other States have shown problems of the same magnitude. The liability for causing these problems, and cost of cleanup, vary. The bill recognizes that the presence of carcinogenic chemicals in our water supply is a national problem which requires a national effort to rectify.

Second, H.R. 7020 as amended in the Senate recognizes that the hazardous substance problem is not merely limited to abandoned hazardous waste dumpsites. The scope of the proposal before us wisely allows EPA and the States to address a variety of releases which threaten public health. Moreover, the bill assures the emergency authority where emergency response is essential.

Our agreement today to send this bill to the President rather than back to the Senate—where it would die—will signal at long last the completion of what could prove to be the most significant environmental legislation of the 1980's. We can afford no further delay in taking this step.

Mr. BROYHILL. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I ask again for a "no" vote on this bill. There are many, many problems with this bill. It is going to be very difficult

to make this a workable program, one that can be easily administered. It bypasses the appropriation process.

I will also point out that there is serious concern by men of good will on both sides of the aisle here in this Chamber. We have the leadership on both sides of two major committees of the House, our Public Works Committee and the House Ways and Means Committee, who have written to their colleagues expressing their concerns about this. We have two other committees where the committee is split, and so I do not think that there is consenus on this bill.

I think we can work out a consensus on it, and I just hope that we have that opportunity by voting down this bill; and then let us offer the amendments that can be added to the bill and send it to the other body and let them pass it and send it to the President.

Mr. FLORIO. Mr. Speaker, I yield 30 seconds to the gentleman from New York (Mr. DOWNEY).

Mr. DOWNEY. Mr. Speaker, the question is whether or not we are concerned in this House with a sense of urgency. This is the proverbial bird in the hand. If we wait, we are allowing thousands of people to be exposed to toxic chemicals that cause cancer, birth defects, and other mutations. We cannot afford to wait.

There is time to remove the onerous provisions, as the gentleman from New Jersey has said, and the Ways and Means Committee will quickly take a look, I am sure, at the section on the dump sites. There is no question that we need to act now, because there is nothing permanent in this bill.

Mr. FLORIO. Mr. Speaker, I yield the balance of the time to the gentleman from Tennessee (Mr. GORE), a very valuable member of the full committee.

Mr. GORE. Mr. Speaker, I thank my colleague.

Mr. Speaker, my colleagues, one of the opponents of this bill waved a short list of minor technical problems with it. We have a very lengthy list of abandoned hazardous chemical waste sites around this country that need to be dealt with. There are 3,000 of them, and the American people want us to deal with this problem.

What are we doing here? What is our responsibility as the representatives of the American people.

□ 1810

Is it to solve this problem or is it to fix the blame for it not being solved? Are we supposed to construct an excuse to blame the other body for this matter not being addressed this year or are we, as their Representatives, to do their bidding, to respond in a constructive and responsible way and pass a good bill to deal with the problem?

Make no mistake about the nature of the procedural quagmire in the other body. One Member can stop legislation in the 2 days remaining. They already have two filibusters and three Members have served notice that they will stop this bill. Make no mistake about the fact that this vote is the key vote on abandoned hazardous waste dump sites.

If you are in favor of solving the problem, if you want to clean up chemical wastes in America, vote yes on this bill. If you have some other interests, if your interest is to put the blame on the

other body as an explanation for why the bill did not pass, then vote some other way.

But if you want to do as your constituents would have you do, and the Harris Poll indicates the biggest reading ever in the history of polling from the American people, let us deal with this problem. This is essentially the House bill. Vote "yes."

● Mr. FRENZEL. Mr. Speaker, the House has passed in H.R. 85 and H.R. 7020 two relatively responsible bills to clean up oil spills and chemical waste dump sites. I supported those bills in committee and on the floor of this House.

Now we are confronted by a flawed and incomplete Senate bill. We are told we must pass it or have nothing. Those in support of the bill believe that this body can be browbeaten into passing it merely because it has a high-sounding title. They ask us to support it as a symbol of our good intentions.

I, for one, am tired of voting for symbols. I believe our job is to pass the best legislation we can. I do not believe we need to vote for a bill just because it has a nice title. We should demand, in the name of our constituents, a good and complete bill.

One of the most serious flaws which is only one example of many flaws, is the new language creating the postclosure liability fund [Sec. 232]. It has not been considered in the House. It gives unlimited liability to Federal taxpayers [Sec. 107(k)]. Unlike other provisions, it is not urgent. We could take the time to create a reasonable fund. I support the efforts of the chairman of the Ways and Means Committee to amend this feature of the bill.

Other speakers have identified other vital flaws. Flaws like the ones we on the Ways and Means Committee see in an area of jurisdiction, is also seen by other committees in their areas. This bill must be repaired before I can support it. I shall vote against it because I won't accept an inadequate solution to a pressing problem. We can do better and I think we should.●

● Mr. BROWN of California. Mr. Speaker, I rise in support of H.R. 7020, a bill to create a fund to clean up hazardous wastes disposal sites.

This legislation, the so-called superfund bill, is a much-discussed, greatly amended, and long overdue piece of environmental law. Unlike some environmental laws, this bill attempts to deal with the problem of who pays for cleaning up the environmental mess we have created. Earlier versions of the bill went even further in this direction and made a good-faith effort to truly incorporate the economic externalities of certain industrial processes into that industrial process. This so-called free market approach to environmental pollution has suffered greatly during the effort to develop an acceptable compromise, but it remains in some form in the bill before us.

In reviewing both the House-passed compromise and the Senate-passed compromise, I see only relatively minor differences. The true losses occurred in both Houses before final passage in each. There is no question in my mind that the modest step we take today will not be the last step we take to solve the hazardous waste problem.

Those who assert that the incoming administration will be more sympathetic to the problems of the chemical industry are no doubt

correct, but sympathy is not the same as following the advice of the chemical industry. I believe that the money which will be raised by the bill before us will be insufficient to deal with the chemical waste problems before our Nation. I also believe the equity of the approach before us, taxing industry to pay for cleaning up industrial wastes, will be recognized by the incoming administration [Sec. 211].

Further, the liability issues which we avoided this year must be addressed in the future, and I am certain will be. I further predict that the absence of clear Federal law on liability will create even greater problems for the chemical industry in the future, and they too will welcome Federal action in this field [Sec. 107].

Mr. Speaker, this modest legislation deserves our overwhelming support. The people who are threatened by known hazardous waste sites need the assistance this bill provides. I urge my colleagues to support it.●

● Mr. RUDD. Mr. Speaker, I recognize that this much-publicized superfund legislation is, in all probability, about to pass, as it did earlier this year.

I feel compelled, however, to outline, albeit briefly, some of my reservations about this bill which cause me to oppose it.

Primarily, I believe this serious question of hazardous waste sites is one of the premier examples of an issue which is best handled by the individual States.

A commendable alternative approach offered by the gentleman from Michigan (Mr. STOCKMAN) when this measure was first considered by the House would have provided a block grant to the States. By this method, the States would be able to set up procedures to deal with the hazardous waste sites within their individual borders according to the priorities they determine.

The only Federal involvement under such a system would be through a simple and direct grant of money to the State governments.

Rather, this bill will perpetuate a Washington-based "solution" administered through the Environmental Protection Agency. Thus, the agency responsible for administering the superfund will be the same bureaucracy notorious for creating such difficulties and confusion within the States in implementing a multitude of other environmental laws enacted in the past decade.

I predict, Mr. Speaker, that the EPA's record of overzealous regulation and administrative snafus will soon characterize the implementation of this legislation as well.

Additionally, Mr. Speaker, I am troubled by the taxation aspects of this legislation. While I recognize the difficulties associated with determining an appropriate formula for taxation, it seems inequitable to me that various primary sources of waste will be taxed regardless of what proportion of that source are ultimately incorporated in hazardous waste end-products [Sec. 211].

This legislation is also likely to prove only a forerunner of additional legislation which will expand this superfund concept with increased taxes levied on industries and/or additional taxpayer dollars appropriated.

While the Senate has greatly improved this measure by providing the congressional oversight provisions through legislative veto

and has reduced the scope of coverage, I fear that this will prove to be a short-term reduction which inevitably will be enlarged at the expense of American consumers and taxpayers.

Because of these far-reaching aspects, I feel that the House should not adopt this important bill in the last minutes before adjournment without additional time for careful and full examination of all of its implications.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. FLORIO) that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 7020.

The question was taken.

Mr. FLORIO. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 274, nays 94, not voting 64, as follows:

[Roll No. 663]

YEAS—274

Abdnor	Burton, John	Ertel
Addabbo	Byron	Evans, Del.
Akaka	Campbell	Fary
Albosta	Carney	Fascell
Alexander	Carr	Fazio
Ambro	Carter	Ferraro
Anderson, Calif.	Chisholm	Findley
Anderson, Ill.	Clausen	Fish
Andrews, N.C.	Clay	Fisher
Andrews, N. Dak.	Clinger	Fithian
Annunzio	Coleman	Flippo
Applegate	Conte	Florio
Ashley	Conyers	Foley
Aspin	Cotter	Ford, Mich.
Atkinson	Coughlin	Ford, Tenn.
AuCoin	Courter	Forsythe
Bafalis	Crockett	Fountain
Bailey	D'Amours	Fowler
Barnes	Danielson	Fuqua
Bauman	Daschle	Gephardt
Bedell	Davis, Mich.	Gibbons
Beilenson	Davis, S.C.	Gilman
Bennett	Deckard	Glickman
Bereuter	Dellums	Goldwater
Bevill	Derrick	Goodling
Biaggi	Dicks	Gore
Bingham	Dingell	Gradison
Blanchard	Dixon	Grassley
Boggs	Dodd	Gray
Boland	Donnelly	Green
Bolling	Dornan	Guarini
Boner	Dougherty	Gudger
Bonior	Downey	Guyer
Bonker	Drinan	Hagedorn
Bouquard	Duncan, Tenn.	Hall, Ohio
Brademas	Early	Hamilton
Breaux	Eckhardt	Harkin
Brodhead	Edgar	Harris
Broomfield	Edwards, Ala.	Hawkins
Brown, Calif.	Edwards, Calif.	Heckler
Buchanan	Emery	Hefner
Burlison	Erdahl	Heftel

Hillis
Holland
Hollenbeck
Holt
Holtzman
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jeffords
Jones, N.C.
Jones Tenn.
Kastenmeier
Kildee
Kogovsek
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leach, La.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Livingston
Lloyd
Long, La.
Lowry
Lujan
Lundine
McCloskey
McDade
McHugh
McKinney
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Murphy, Pa.
Murtha
Musto
Natcher
Nelson
Nolan
Nowak
Oakar
Oberstar
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Peyser
Porter
Preyer
Price
Pursell
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rinaldo
Ritter
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Royer
Russo
Sabo
Sawyer
Scheuer
Seiberling
Shannon
Sharp
Shelby
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Solarz
Spence
St Germain
Stack
Staggers
Stark
Stewart
Stokes
Stratton
Studds
Swift
Tauke
Tauzin
Traxler
Udall
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Waxman
Weaver
Weiss
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—94

Anthony
Archer
Ashbrook
Badham
Barnard
Benjamin
Bowen
Brinkley
Brooks
Brown, Ohio
Broyhill
Burgener
Butler
Chappell
Cheney
Cleveland
Collins, Tex.
Conable
Corcoran
Crane, Daniel
Daniel, R. W.
Dannemeyer
de la Garza
Devine
Erlenborn
Evans, Ga.
Evans, Ind.
Frenzel
Gaydos
Gingrich
Ginn
Gonzalez
Grisham
Hall, Tex.
Hammerschmidt
Hansen
Harsha
Hightower
Hinson
Ichord
Jacobs
Jeffries
Jenkins
Johnson, Calif.

Jones, Okla.	Petri	Stenholm
Kazen	Pickle	Stockman
Lewis	Pritchard	Stump
Loeffler	Roberts	Symms
Luken	Robinson	Synar
Lungren	Roth	Taylor
McClory	Rousselot	Thomas
McDonald	Rudd	Trible
Madigan	Santini	Vander Jagt
Michel	Satterfield	Watkins
Montgomery	Schulze	White
Moore	Sebelius	Whitehurst
Moorhead, Calif.	Sensenbrenner	Whitten
Myers, Ind.	Shumway	Wydler
Nichols	Snyder	Wylie
Pashayan	Stangeland	
Paul	Stanton	

NOT VOTING—64

Baldus	Jenrette	Obey
Beard, R. I.	Johnson, Colo.	Ottinger
Beard, Tenn.	Kelly	Railsback
Bethune	Kemp	Rhodes
Burton, Phillip	Kindness	Richmond
Cavanaugh	Kostmayer	Rodino
Coelho	Kramer	Schroeder
Collins, Ill.	Leath, Tex.	Shuster
Corman	Long, Md.	Solomon
Crane, Philip	Lott	Spellman
Derwinski	McCormack	Steed
Dickinson	McEwen	Thompson
Duncan, Oreg.	McKay	Ullman
Edward, Okla.	Mathis	Wampler
English	Mattox	Wilson, Bob
Fenwick	Moorhead, Pa.	Wilson, C. H.
Frost	Mottl	Wolff
Garcia	Murphy, Ill.	Wyatt
Giaimo	Murphy, N.Y.	Yates
Gramm	Neal	Young, Alaska
Hance	Nedzi	
Hanley	O'Brien	

□ 1820

The Clerk announced the following pairs:

On this vote:

Mr. Murphy of Illinois and Mr. Dickinson for, with Mr. Bethune against.
Mrs. Fenwick and Mr. Railsback for, with Mr. Philip M. Crane against.
Mrs. Collins of Illinois and Mr. Garcia for, with Mr. Wampler against.
Mr. Richmond and Mr. Rodino for, with Mr. Lott against.

Until further notice:

Mr. Murphy of New York with Mr. Beard of Tennessee.
Mr. Thompson with Mr. Shuster.
Mr. Baldus with Mr. Young of Alaska.
Mr. Coelho with Mr. Kemp.
Mr. Jenrette with Mr. McEwen.
Mr. Mathis with Mr. O'Brien.
Mr. McCormack with Mr. Kramer.
Mr. Moorhead of Pennsylvania with Mr. Edwards of Oklahoma.
Mr. Mottl with Mr. Derwinski.
Mr. Hanley with Mr. Johnson of Colorado.
Mr. English with Mr. Kindness.

Mr. Corman with Mr. Bob Wilson.
Mr. Beard of Rhode Island with Mr. Solomon.
Mr. Duncan of Oregon with Mr. Frost.
Mr. Giaimo with Mr. Hance.
Mr. Kostmayer with Mr. Leath of Texas.
Mr. Long of Maryland with Mr. Mattox.
Mr. Neal with Mr. Nedzi.
Mr. Obey with Mr. Ottinger.
Mrs. Schroeder with Mr. Steed.
Mr. Ullman with Mr. Charles H. Wilson of California.
Mr. Wolff with Mr. Yates.

Mr. HIGHTOWER and Mr. HANSEN changed their votes from "yea" to "nay."

Messrs. MARLENEE, HUTTO, LIVINGSTON, ATKINSON, Mrs. BYRON, and Mrs. SMITH of Nebraska changed their votes from "nay" to "yea."

So (two-thirds have voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1830

GENERAL LEAVE

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7020.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.